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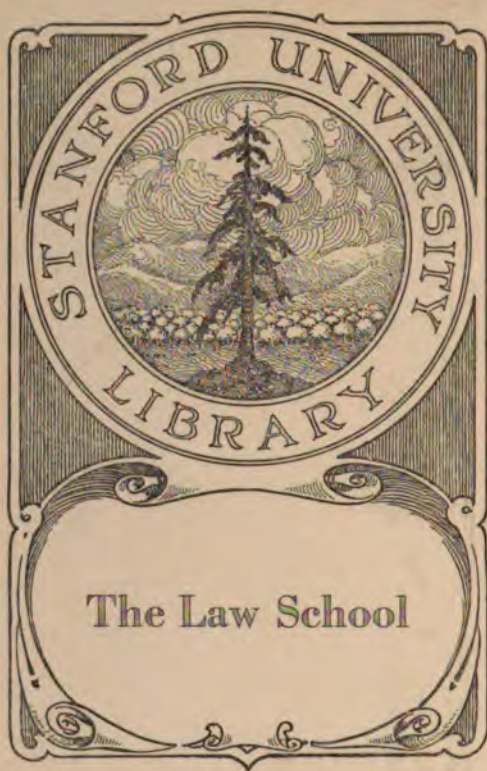
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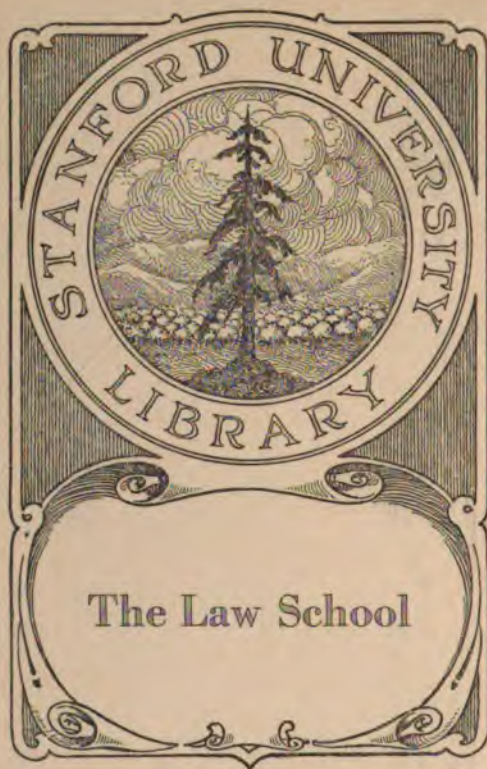
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**PROCEEDINGS OF THE
IOWA STATE BAR
ASSOCIATION**

*SEVENTEENTH
ANNUAL
SESSION*

**HELD AT OSKALOOSA, IOWA
JUNE 29 AND 30, 1911**







J. L. CARNEY

PROCEEDINGS
OF THE
SEVENTEENTH ANNUAL SESSION
OF THE
IOWA STATE BAR ASSOCIATION

HELD AT
OSKALOOSA, IOWA

JUNE 29 AND 30, 1911

IOWA CITY, IOWA
PUBLISHED BY THE ASSOCIATION

1911

340826

УВАЖАЮЩИ ОБОЖНАТЪ

CONTENTS

	Page
ANNOUNCEMENT OF ANNUAL MEETING FOR 1912.....	4
ADDRESS OF WELCOME, JOHN F. LACEY.....	5
RESPONSE TO ADDRESS OF WELCOME, C. A. CARPENTER.....	9
REPORT OF THE COMMITTEE ON MEMBERSHIP.....	14
REPORT OF THE TREASURER.....	15
REPORT OF THE LIBRARIAN.....	16
REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY.....	19
REPORT OF DELEGATES TO THE AMERICAN BAR ASSOCIATION...	37
PAPER: THE LAWYER AS A PATRIOT, JOHN C. SHERWIN.....	43
PAPER: PARTICULARIST SOCIETY, F. F. DAWLEY.....	53
PRESIDENT'S ADDRESS: JOHN MARSHALL, J. L. CARNEY.....	59
PAPER: THE LAW, W. R. LEWIS.....	73
PAPER: A PRACTICAL LEGAL EDUCATION, RALPH OTTO.....	77
REPORT OF AUDITING COMMITTEE.....	86
ANNUAL BANQUET, J. L. CARNEY, TOASTMASTER.....	88
UNCERTAINTIES OF THE LAW, J. A. DEVITT.....	89
THE JUDGE AND THE LAW, J. M. PARSONS.....	95
THE RAILROADS AND THE LAW, J. C. DAVIS.....	101
A JURY OF OUR PEERS, M. J. WADE.....	106
BENCH AND BAR OF NORTH DAKOTA, GOV. JOHN BURKE...	112
THE FEDERAL JUDICIARY AND THE BAR, WALTER I. SMITH	117
REPORT OF THE COMMITTEE ON LAW REFORM...123, 141, 184, 186	
ELECTION OF OFFICERS.....	140
ANNUAL ADDRESS: EMPLOYERS' LIABILITY AND WORKINGMEN'S	
COMPENSATION ACTS.....	156
REPORT OF EXECUTIVE COMMITTEE.....	183
CONSTITUTION AND BY-LAWS.....	197
OFFICERS AND MEMBERS OF COMMITTEES FROM 1894 TO 1912...	205
LIST OF ANNUAL ADDRESSES, 1895 TO 1911.....	219
LIST OF PAPERS READ BEFORE THE ASSOCIATION, 1896 TO 1911..	220
MEMORANDA OF SUBJECTS REFERRED TO COMMITTEES FOR 1912	
MEETING	223
LIST OF MEMBERS.....	224
INDEX	231

[Announcement]

THE EIGHTEENTH ANNUAL MEETING
OF THE
IOWA STATE BAR ASSOCIATION

WILL BE HELD AT
CEDAR RAPIDS, IOWA
JUNE 27 AND 28, 1912

OFFICERS AND EXECUTIVE COMMITTEE FOR 1911-1912

OFFICERS

President, C. G. SAUNDERS, Council Bluffs
Vice-President, H. E. DEEMER, Red Oak
Secretary, H. C. HORACK, Iowa City
Librarian, A. J. SMALL, Des Moines
Treasurer, FRANK T. NASH, Oskaloosa

EXECUTIVE COMMITTEE

1st District, E. D. MORRISON, Washington
2nd District, H. C. HORACK, Iowa City
3rd District, GEO. W. DUNHAM, Manchester
4th District, J. H. MCCONLOGUE, Mason City
5th District, H. M. REMLEY, Anamosa
6th District, W. B. LEWIS, Montezuma
7th District, J. H. HENDERSON, Indianola
8th District, L. H. MATTOX, Shenandoah
9th District, O. W. WITHAM, Greenfield
10th District, J. W. MORSE, Estherville
11th District, W. P. BRIGGS, Sheldon

PROCEEDINGS OF THE
SEVENTEENTH ANNUAL MEETING
OF
THE IOWA STATE BAR ASSOCIATION

HELD AT

OSKALOOSA, IOWA, JUNE 29 AND 30, 1911

OPENING SESSION, THURSDAY, JUNE 29, 1911

9:30 O'CLOCK A. M.

THE PRESIDENT: The Association will be in order. The Divine Invocation will be pronounced by the Reverend Alexander McFerran.

DIVINE INVOCATION

We thank Thee, our Father, for the opening of this beautiful day, and for the coming together of this assemblage of men, who are bound together in the common warfare of life. We pray Thee that Thou shalt bind them more closely together. Bless these men, we pray Thee, as they represent the State in their chosen profession. Guide them in their efforts to elevate the principles of justice, peace, and prosperity. May Thy blessing upon this Association be of benefit to all of its members. We pray Thee that the love of Jesus Christ, and the love of God who is the Father of all, shall abide within us. We ask it all in Jesus' name. Amen.

THE PRESIDENT: The address of welcome will be delivered by Major John F. Lacey, of the local bar.

MAJOR JOHN F. LACEY: *Gentlemen of the Bar:* It is a pleasant and useful custom that brings you together in these annual meetings, and the people of this city appreciate the honor of having you in our midst. You are more than welcome, and we tender to you the sincere hospitality of our goodly city.

Your meeting is social in a great degree and where you get together, you become your own entertainers. Members of the bar learn to know and appreciate one another as in no other profession.

In one hard-fought case you meet each other as adversaries and learn to appreciate one another from the other side, or, rather, from the outside. In the next one, perhaps, you are employed on the same side of a cause and are admitted to the very heart of each others' confidence, and learn to know each other from the inside; and that view of a former opponent is always a much more pleasing one than from the attitude of professional hostility. In this gathering you are all on the same side and from the same standpoint of social fraternity I know you will enjoy the friendly reunion.

In the old days when we traveled upon the circuit horseback, and with perhaps one or two books in the saddle bag, every court was a bar meeting, and the judge of the court was the presiding officer, and at those gatherings the farmer boy, coming to town on some errand, would drop into the court room to hear the trial then in progress, and to listen to and witness the combat between the leaders of the bar. The old days when jury, grand-jury, witnesses, and such as could spare the time gathered during court week to hear and witness the clash of arms between the traveling leaders of the bar have gone by, never to return. The proceedings of the courts have ceased to be centers of amusement. The present generation does not even know what it is missing. The friendly relations and pleasant intercourse among leaders of the bar, over wide regions, brought to the profession a compensation much more worthy of the seeking than the mere financial rewards of the present day.

When Blackhawk, in the days of his later life, spoke of the early days along the rivers of Illinois; of the game, the wild fruits, and the fruitful patches of corn and gardens, he exclaimed in the fullness of his heart: "These were the days that were!" We revive the memories and those days to some degree by these friendly meetings of the men who love their profession well enough to gather from all parts of the State to exchange and fraternize for a day or two.

In after life we always look back with pleasure to any place at which we may have had a good time, and our people especially hope that among these recollections you will recall the meeting of your Association at Oskaloosa in 1911. But your meeting will be in vain, after all, if it is only to be remembered for its pleasures.

The bar represents a great conservative force in our national life. Our government with its three coördinate branches: the executive, the legislative, and judicial, must look largely to an upright and honorable bar to maintain the respect of the public to the judicial branch of the structure. It has long been one of the pleasantries among lawyers that when you are not satisfied with a decision that the proper course is to "appeal or go down to the tavern and swear at the court".

Now it is proposed that a more effective method would be to circulate a petition for the recall of the judge and hold this *in terrorem* over the judicial head when each decision is made. Each judicial judgment in an important case would involve the likelihood of an immediate reference of the case to the popular judgment of the voters in a recall election in which the parties and counsel on the losing side would not fail to participate. Would self-respecting lawyers seek or accept burdens or honor of judicial office upon such conditions? Aristides was banished from Athens upon a popular vote, because the Athenians had grown "tired of hearing him called the just". We get a chance at our judges every four years in Iowa, under our present laws; that is quite a short period as it is. The bar has always been brave enough to do its duty, even in behalf of an unpopular client. Judges have had the manhood to stand up against the demands of the executive on the one hand, or the people on the other, in making decisions that they believed to be in accordance with the law, whether popular or not. It is easy to make a popular decision: it costs no effort to float with the tide. A judge is responsible rather for the uprightness than the rightness of his decisions.

The common law, or, as we more properly term it, the "judge-made law", is after all the foundation of our valued rights. A judicial decision, where there is no statute to control it, is "judge-

made law", but the court must give a reason for its action. On the other hand, a statute needs to give no reason for its enactment: it is the incarnation of physical and political force. The common law is the incarnation of reason and the result of long lines of judicial interpretation made by wise men trained in the law, and whose ripened judgment is accepted as authoritative by bench and bar, upheld by the people, because it is the great conservator of their private and political rights. The richest heritage that we have received from our Anglo-Saxon ancestors is the common law. There is an old saying among lawyers that a good lawyer ought to be ashamed not to be able to give a fairly accurate opinion upon a question of common law, even if asked upon the street; but that any good lawyer should be ashamed to give an opinion upon statute law without having the statute before him. His reason teaches him as to the common law. As to the statutes, memory is the only, but an unsafe, guide. After all, the reason of the law is the strength of the law.

Changes in the law are the proper subjects of discussion in an Association of this kind, but lawyers do not favor changes for change sake alone. Experience in the past is the lamp which illuminates the proper course in the future. The true test of a law is, "How has it worked?" Wise, conservative, and reasonable changes in existing laws are among the most fitting subjects for your discussion and consideration, but no gathering of lawyers will favor changes in the laws where good and sound results have been obtained by their enforcement in the past.

The French philosophers held that history consisted more in warnings than in models. To the bar it is full of both. The pilot was bragging that he knew every rock in the channel, "and there is one of them now", he said, as the vessel struck.

Warnings are useful, but, after all, good models are the most valuable. It has been said of the churches that people who are ashamed of their religion have good reason to be. We may well say the same of lawyers. But, my brethren of the bar, it is not my duty to make a general address on this occasion.

I am told to bid you welcome this morning. People always remember any town, any city, any place in which they have a good time. We want you to have a good time at Oskaloosa; we

feel assured that you will do so, because you are your own entertainers, and you are first class entertainers of one another. You can swap your stories here, and they will be brand new when you get back to Garnaville, or Des Moines, or Guthrie Center, or Montezuma. And that is one of the pleasant things of these reunions. You cannot go on the circuit any more, but you can meet annually at the Bar Associations and talk over the present, and live for a time in the past, and with your faces towards the future and full of hope, believe that the future will be at least as good as the past has been, and certainly that would be very satisfying to the great majority.

Now, one and all, I bid you welcome to Oskaloosa.

THE PRESIDENT: The response to the address of welcome will be delivered by the Honorable C. A. Carpenter, of Columbus Junction.

C. A. CARPENTER: *Mr. President and Members of the Bar Association:* I esteem it a great honor to be commissioned by the Iowa State Bar Association to make response to the generous words and hearty welcome just pronounced by Major John F. Lacey, the dean of the Mahaska County Bar. The genuineness and fervor of Oskaloosa hospitality quite overwhelms us and in the hour and a half allotted for my response, I am sure I shall have difficulty in finding words adequate to fully express the feelings of the Bar.

Then too, Mr. President, you must be aware that up to the time that we received assurance of welcome from Major Lacey's lips, we had no certain means of knowing just what our reception would be. Many a man has stepped upon a promising situation only to have it fly up and hit him in the face, and being in a state of uncertainty, we have neglected to dust off the dictionary and search for the words out of which to construct a fairly appropriate speech of appreciation. But now that our welcome has been so warmly assured, we can only exclaim, "This is so sudden!"

To fully appreciate my position, you must go back with me to the time I received from the Program Committee the invitation to respond to an address of welcome that I had never yet had the

pleasure of hearing, and you must follow my thoughts as I gave sleepless days and nights to the preparation of this impromptu speech and my burlap suit into the tender care of the panatorium to dust and crease, and as I studied time cards for the journey and examined maps to refresh my memory as to the location of Oskaloosa. Constantly the thought kept running in my mind, what if after all these mighty preparations, and what if after the toilsome journey, we should arrive at Oskaloosa and there should be no welcome from Major Lacey, or the bar, or Oskaloosa, or the citizens thereof, but that we should be received coldly? Turning to the thermometer for counsel and to weather reports for June, I was led to hope that the reception would at least be a warm one. Then again I spurred a lagging memory into action and my mind went back to the time of the old Sixth Judicial District, when Louisa was yoked in the bonds of judicial wedlock with Mahaska and before you divorced her that she might marry Henry. Then we used to come down from Louisa at stated periods to help nominate, rather I should say to ratify the nomination of some distinguished member of the Oskaloosa Bar, or to attend the funeral of some respected citizen whom the grim reaper had retired from office, and as I ransack my memory, I also recall the numerous State conventions wherein we met your delegations, presenting some of your most worthy citizens for our consideration, and as I recalled all of these meetings there came to me a surging memory of Oskaloosa hospitality and a keen recollection of the cordiality with which our delegations were received.

And, Mr. Chairman, I have often contemplated the strong lawyers, the able judges and the sagacious statesmen that Mahaska County has furnished to the State of Iowa, and I have said again and again to myself, "Some men are born great, some achieve greatness," while others adopt the simple expedient of moving to Oskaloosa.

It was here in Oskaloosa that on one of these festive occasions I attended a concert generously given by local talent to entertain the visiting guests, when I heard for the first time that beautiful hymn, "There'll be a Hot Time in the Old Town Tonight," rendered by an Oskaloosa quartette. On reflection, it occurs to

me that it was on the occasion of a Masonic convention and not the funeral of one of Oskaloosa's honored citizens.

The revival of these memories reassured me as to the welcome we would receive at this convention, and so I wandered down the path to the station at Columbus Junction and inquired the distance to Oskaloosa and the price of a ticket, and my spirits arose in buoyant expectation, and as the agent flagged the train, I bade goodbye to Columbus Junction's population upon the platform assembled and began my journey to Oskaloosa, full of hope and courage.

In mentioning Columbus Junction, permit me to digress and to remark parenthetically upon the unanimity of sentiment among our people. They all, male and female, man, woman, and child, stand upon one platform daily (the Rock Island) and I might remark also that barring a few knots and nail heads, it is a perfectly good platform, upon which anyone, Democrats, Republicans, Standpatters, or Insurgents can safely stand.

Let's see, Mr. President, where was I, aboard or on the platform? Well, as I remarked, the agent flagged the Oskaloosa Limited and I said goodbye to my people. Every eye was dry, everybody pleased to have me leave, and anxious I should stay away as long as I could, and with a last look at the elevator and the water tank that marks the site of my home village, I faced toward Oskaloosa and this meeting. The tedium of the long journey through the arid wastes of Louisa, Washington, and Keokuk counties would not interest you, Mr. Chairman and members of the convention, and might tend to aggravate your thirst, so I shall omit many details. I say arid advisedly as to Louisa and Washington counties, as they are absolutely dry, and on information and belief I say that Keokuk County went dry about two years ago.

Seating myself firmly in the smoker, I resisted the efforts of the train butcher to market any of his wares on me, keeping my money for the big show. I kept my thoughts firmly fixed on Oskaloosa and my eyes on the scenery, and as the train sped on at fifteen miles per, I saw my native water tank disappear beneath the horizon, and realized that save for the few hardy and adventurous lawyers that joined us from time to time, looking for

personal injury cases, I was alone with my speech on the Great Rock Island Route, and I firmly resolved to pay no more than twenty-five per cent attorney fees for recovery in case I was injured. The fifty-seven varieties, the talcum powder and the Short Horn tobacco signboards moved by in stately procession, each one recording the miles from Columbus Junction. Mile by mile the distance grew until at last the signboard erected by the generosity of the American Tobacco Company in order to advertise Durham cattle, recorded the fact that the distance was sixty-nine miles to Columbus Junction, and then I knew that we were nearing the metropolis of proud Mahaska, Oskaloosa, surnamed Standpatville by my friend Major Lacey, and as the brakeman opened the door to call the station I whiffed the faint odor of roasting veal, and I knew that the fatted calf was being made ready and that we were to be received as befitted prodigal sons.

How vividly I recall the thrills with which I heard the brakeman's clarion call of "Oskaloosa". To me it sounded like the chanticleer on his perch as he flaps his wings and greets the roseate dawn of each new day. The very sound of the name Oskaloosa challenges the imagination, and the true native of Mahaska does not pronounce the name, he crows it, and Mr. Chairman, as I have reflected upon the matter I give it as my mature conclusion that the only reason Oskaloosa is not famed in song and verse is because no word can be found to rhyme with it.

And now that we have mingled in your midst and have had some of your eatables and drinkables mingled in our midst, and we have been so well received, it is our earnest wish that we might remain in the hands of the receiver all summer, and that Oskaloosa might adopt us as her own and teach us to crow the name as the native Mahaskans do, and run us for office, and show us how to win our cases, and instill in us the spirit of her hospitality. We like the spirit of Oskaloosa and we want to be filled with it. We shall regret when necessity compels us to return to the drugstore spirits of our home towns.

Mr. Chairman, we are all here now in the annual meeting of the Iowa State Bar Association, truly grateful for your cordial welcome and we exchange felicitations. The citizens of Oskaloosa and the Oskaloosa Bar tender us the freedom of the city,

and the Iowa Bar tenders—I mean the Bar of Iowa—tenders to the local Bar and to the city its high appreciation of your hospitality. You need not bother to suspend the Ten Commandments, nor the statutes nor ordinances in such cases made and provided. We expect to have a sober, quiet time. We shall none of us exceed the speed limit. We enter into the business of the convention conscious of the fact that we want entertainment, not information. We already have information on the brain. I earnestly hope that this may be a season of rest and enjoyment, where serious subjects may be discarded and only light and trifling legal subjects be mentioned, and now may we turn to a good old-fashioned talkfest. You, our generous hosts of the Mahaska County Bar, come first to tell how and why you have won your cases, and after you, my dear Alfonso, we will explain how and why we have lost ours. The competition will be friendly and I hope generous, and may the laurels be awarded to the best explainers. A maxim of the law should be, “He who cannot explain is lost.”

I predict, Mr. Chairman, a pleasant meeting, a most enjoyable time, made more so by your generous greeting, and we hope and expect to so demean ourselves that when we leave your city, you will be glad we came and we will be welcome back at some future meeting of the Iowa Bar.

I predict, Mr. Chairman, and my predictor is adjusted like a chronometer and is not affected by heat, I predict a most successful meeting, and that much good will result from the interchange of courtesies and thought among the members of the Bar, and that when the convention concludes we will all return to our homes, full of praise for Oskaloosa and full of your good things, and with renewed hope and courage for the battle of life. And for myself, Mr. Chairman, I desire to say that when I return to my home, I shall go with renewed determination to give an exhibition of how little a man can do for his money, waiting expectantly for the next Bar Convention and hoping it will be held at Oskaloosa.

Often in the past I have answered inquiries as to where is Columbus Junction, by locating it fifty miles west of Davenport, forty miles north of Burlington, and sixty miles south of Cedar

Rapids, and bounded on the west by the horizon of its hopes and the ambitions of its citizens, and to all such benighted inquirers I have added the information that Columbus Junction was the largest town of its size in Iowa, but now, Mr. Chairman, having again visited your beautiful city and tasted its hospitality, and in the eager anticipation of favors yet to come, on behalf of my native town and of the Bar of Iowa, I want to hand to Oskaloosa the proud distinction of being a larger city of its size than Columbus Junction, and I promise you, Mr. Chairman, that in the future I shall do you the honor to locate Columbus Junction to all inquirers as being seventy miles east of Oskaloosa. Thus will I do my honorable part to repay your hospitality. Thus will I discharge a part of the debt of gratitude I owe, and thus will the name of Oskaloosa become a household word.

THE PRESIDENT: We will next listen to the report of the Committee on Membership, by Mr. Frank T. Nash, chairman.

REPORT OF COMMITTEE ON MEMBERSHIP

To the Iowa State Bar Association: Your Committee on Membership beg leave to report that they have received applications from the following gentlemen who are recommended for membership in the Association.

C. H. Wegerslev,	Alta.
J. O. Boyd,	Keokuk.
T. J. Boland,	Council Bluffs.
J. C. Leonard,	Cedar Rapids.
J. F. Webber,	Ottumwa.
E. M. Sabin,	Northwood.
John C. Shipley,	Mason City.
B. G. Popham,	Marengo.
C. H. Amos,	Knoxville.
W. G. Vander Ploeg,	Knoxville.
Harold J. Wilson,	Burlington.
George J. Thommasen,	Pella.
George G. Gaass,	Pella.
C. W. Ramseyer,	Bloomfield.
C. Ver Ploeg,	Oskaloosa.
Irving C. Johnson,	Oskaloosa.
Jno. O. Malcolm,	Oskaloosa.
J. G. Patterson,	Oskaloosa.

W. H. Keating,	Oskaloosa.
John F. Lacey,	Oskaloosa.
C. C. Orvis,	Oskaloosa.
H. H. Sheriff,	Oskaloosa.
F. D. Reid,	Oskaloosa.
L. E. Corlett,	Oskaloosa.
W. C. Burrell,	Oskaloosa.
R. G. Howard,	Jefferson.
Walter McNett,	Ottumwa.
John N. McCoy,	Oskaloosa.
F. A. Ontjes,	Mason City.
R. J. Smith,	Montezuma.
Ralph Otto,	Iowa City.
Geo. C. True,	Oskaloosa.
Ben McCoy,	Oskaloosa.
Jos. B. Jacques,	Ottumwa.
Edward H. McCoy,	Waterloo.
O. C. G. Phillips,	Oskaloosa.
W. R. Hart,	Iowa City.
G. P. Linville,	Cedar Rapids.
G. M. Titus,	Muscataine.
J. O. Watson,	Indianola.
O. W. Witham,	Greenfield.
J. E. Stevens,	Boone.

Upon motion duly made the report was adopted.

THE PRESIDENT: We will listen to the report of the Treasurer, Mr. Charles S. Wilcox.

**TREASURER'S REPORT—IOWA STATE BAR ASSOCIATION
FROM JUNE 22, 1910, TO JUNE 28, 1911**

RECEIPTS

Balance on hand on date of last report.....	\$478.15
Membership fees	216.00
Annual dues	1224.00
Total Receipts	\$1918.15

DISBURSEMENTS

Robt. J. Bannister, deficit in matter of last annual banquet (Order No. 49).....	\$ 22.00
Chas. M. Dutcher, Secretary, salary for year 1909 to 1910 (Order No. 50).....	200.00

C. A. Thomas, expenses for trip to Des Moines for annual address (Order No. 51).....	45.00
F. S. Dunshee et. al., expenses of membership committee (Order No. 52).....	63.68
J. P. Blaise, stenographer, reporting proceedings of 1910 meeting and making transcript thereof (Order No. 53)	70.50
Chas. M. Dutcher, Secretary, printing, telegram and supplies (Order No. 54).....	10.34
Citizen Printing House, Iowa City, printing and material (Order No. 55).....	12.90
Chas. M. Dutcher, Secretary, express and envelopes for proceedings (Order No. 56).....	61.94
Economy Advertising Co., printing proceedings of 1910, supplies and freight charges (Order No. 57).....	341.03
Arcade Printing Co., envelopes and printing blanks for treasurer (Order No. 58).....	15.00
Chas. S. Wilcox, Treasurer, postage and supplies (Order No. 59)	46.21
<hr/>	
Total disbursements	\$ 888.60
Balance on hand.....	1029.55
<hr/>	
	\$1918.15

All bills paid.

Respectfully submitted,

CHAS. S. WILCOX, Treasurer.

Dated June 28, 1911.

Upon motion duly made the report was received and referred to the Auditing Committee.

THE PRESIDENT: Next we will listen to the report of the Librarian, by Mr. A. J. Small, of Des Moines.

REPORT OF THE LIBRARIAN

To the President, officers and members of the Iowa State Bar Association.

Gentlemen:—I herewith hand you my report as Librarian of the Association with a recommendation:

Since my incumbency as your Librarian I have carefully guarded the distribution of the proceedings of the Association, though I have distributed copies to those persons and institutions interested and entitled to them. I have sent out current issues

to the various State Librarians, Bar Associations, libraries, and law schools over the country and to the local libraries within our own State. Not only have I sent out current issues to those institutions but I have completed several sets. I have not attempted to send out to all the secretaries of the various State Bar Associations for the reason that some were not known to me and others did not care for them; but I have sent to those whom I knew and who desired our proceedings. I have found it very helpful to me in securing exchanges for the State Library. We now have one of the best collections of the various bar proceedings in this country; these are bound and made accessible. I invite the members of this Association to visit, inspect and make use of these proceedings and our splendid State Law Library.

There is one matter which I desire to call to your attention and which I recommend for favorable consideration. It is no doubt generally known by a majority of this membership that a State Bar Association was organized in Iowa in 1874, and that it held annual meetings for several years. The only proceedings known to exist in pamphlet form are the second, 1875, third, 1876, and the fifth, 1878. All the proceedings, however, were published in *The Western Jurist*, a legal periodical published in Des Moines.

This early association was organized May 27th, 1874, with the following list of officers:

President, James Grant.
1st Vice President, C. H. Gatch.
2d Vice President, O. P. Shiras.
3d Vice President, W. A. Stowe.
Recording Secretary, C. A. Clark.
Corresponding Secretary, Crom Bowen.
Treasurer, C. C. Nourse.

Iowa having one of the first if not the first State Association we should take pride in the fact. Besides there are several able addresses by such jurists as Judge John F. Dillon, Judge T. M. Cooley, Judge J. M. Love, Hon. E. H. Stiles, Judge George W. McCrary, and others. These addresses are worthy and deserving of publication and of being made available. I would recommend that the proceedings of the old association be printed. They are not extensive and can easily be bound in a small volume. A price might be placed upon them and we might sell them to in-

stitutions and individuals other than those provided for on the free list. I am quite sure a number can be sold at a reasonable sum—enough to partially pay for the cost of reprinting. It seems to me desirable that these proceedings be reprinted and I earnestly recommend that it be done.

Respectfully submitted,

A. J. SMALL, Librarian.

THE PRESIDENT: You have heard the report of the Librarian. What shall be done in regard to the recommendation with respect to the first Bar Association in the United States, as I understand it?

JUSTICE H. E. DEEMER: I move you that the matter be referred to a committee of three, appointed by the Chair, with power to act.

The motion was duly seconded and carried, and the Chair appointed as such committee, Justice H. E. Deemer, Judge W. R. Lewis, and R. M. Haines.

JAMES O. CROSBY: I think I have a complete copy of *The Western Jurist*, that I shall be pleased to donate to the library.

THE PRESIDENT: Next we will hear the report of the Committee on Legal Education and Admission to the Bar, by Justice Emlin McClain, of Iowa City.

THE SECRETARY: I have a letter from Justice McClain with respect to that report, which is as follows:

“On the program of the State Bar Association for Thursday morning is a report on Legal Education and Admission to the Bar. No matters have been referred to the committee for report and the committee has nothing to submit at this meeting. Please make this announcement when the report of the committee is called for.

Truly yours,

EMLIN MCCLAIN.”

THE PRESIDENT: Passing that matter then, we come to the report of the Committee on Legal Biography, by Hon. W. R. Lewis, of Montezuma, chairman.

REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY

Your Committee on Legal Biography, by its report last year, undertook to suggest that it is preferable that the committee do the work for the year of its incumbency, rather than for the preceding year, and that so far as possible the histories be collected and the report for the year be presented at the end of the year. The committee has undertaken to do this this year and presents herewith the biographies of the brothers who died between June 1, 1910 and June 1, 1911, with the exception of four or five which we ask permission to add to our report in case we succeed in getting the necessary information before the proceedings are ready for the press.

It will be observed that biographies belonging in the period ending June 1, 1910 are included in this report. This arises from the fact that the necessary data was not secured in time for the 1910 report.

The Clerks of the District Court of the several counties again place us under the greatest obligations by their courteous, prompt and careful response to our requests for assistance.

Our report is not in all cases as full as we wished to make it. We have gone, in every case, to the records of the local associations where these have been made up, and corresponding, as far as we could learn, with those nearest the decedents, in an effort to make the record of this Association as complete and accurate as possible.

W. R. LEWIS.

J. O. CROSBY.

P. B. WOLFE.

Committee.

LIST OF DECEASED IOWA LAWYERS, FROM JUNE 1, 1910 TO JUNE 1, 1911

	Born	State	Died	State
Baker, General Andrew Jackson	June 6, 1832	Virginia	April 23, 1911	Iowa
Baker, Hon. Charles	January 18, 1843	New York	July 1, 1910	Iowa
Belshelm, Gullick H.			August 17, 1910	Iowa
Brown, Thomas	December 3, 1835	Ohio	February 9, 1911	Iowa
Brown, Alexander	May 3, 1837	Pennsylvania	August 10, 1910	Iowa
Brown, William D.	October 21, 1852	Illinois	January 3, 1911	Iowa
Birchard, Wm. J.	March 13, 1844	New York	April 19, 1911	Iowa
Chase, Warren	October 14, 1843	New York	January 27, 1911	Iowa
Clark, James W.	May 11, 1874	Iowa	May 10, 1910	Texas
Crawford, Phineas White	September 21, 1830	Vermont	December 11, 1910	Iowa
Carruthers, S. S.	September 15, 1843	Germany	February 20, 1911	Iowa
Davis, Jacob C.	February 6, 1858	Virginia	December 3, 1909	Iowa
Dolliver, Jonathan Prentiss	August 2, 1845	Pennsylvania	October 15, 1910	Iowa
Elwood, Thomas Ethan	July 29, 1843	Scotland	January 5, 1911	Iowa
Ferguson, William Pitt	January 25, 1853	Iowa	October 15, 1910	Iowa
Fitzgarrald, William Franklin	May 2, 1846	New Hampshire	December 14, 1909	Missouri
Gleason, Horace W.	January 1, 1835	Maine	April 20, 1911	Iowa
Hornby, John D.	1848	Michigan	October 7, 1910	Iowa
Ivory, Theodore W.	February 29, 1828	Pennsylvania	April 21, 1911	Iowa
Lichty, Lewis			February 6, 1911	Iowa
Lister, George W.	September 15, 1834	Indiana	December 12, 1910	Iowa
McNeil, Harrison	April 10, 1845	Iowa	September 22, 1910	Iowa
Miller, Benjamin Huber	March 13, 1878	Illinois	March 9, 1911	Iowa
Middleworth, Abram	April 27, 1857	New York	March 1, 1911	Iowa
Richardson, George A.	September 1, 1860	Iowa	April 6, 1911	Iowa
Scott, Samuel Crew	January 23, 1847	Pennsylvania	April 13, 1911	Iowa
Smalley, Edward Lashelles	September 28, 1846	Ohio	June 24, 1910	Iowa
Staubert, John S.	January 17, 1830	Pennsylvania	March 24, 1911	Iowa
Thompson, Hon. William George	April 3, 1854	Pennsylvania	April 2, 1911	Iowa
Updegraff, Thomas	February 20, 1850	Norway	October 5, 1910	Iowa
Vinje, David Johnson	December 26, 1856	Iowa	June 18, 1910	Iowa
Whipple, William Perry			June 6, 1910	Iowa

ANDREW JACKSON BAKER, of Appanoose County. 1832-1911.

Andrew Jackson Baker was born in Virginia (subsequently West Virginia), on June 6, 1832 and died at Centerville, Iowa, April 23, 1911.

He was educated at Howell Academy, Mt. Pleasant, Iowa, and was admitted to the bar at Chariton, Iowa in 1855 and commenced the practice of law there that year. He lived there, and at Lancaster, Jefferson City, and St. Louis, Missouri; at Centerville, and Des Moines, Iowa; and Tacoma, Washington. He was Attorney General of Missouri 1870 to 1872, Attorney General of Iowa 1885 to 1889.

The local Bar Association of Appanoose County leaves this record of its estimate of General Baker:

"Whereas, by the hand of death, there has been taken from the ranks of the Appanoose County Bar one of its most esteemed and honored members, General A. J. Baker;

"And, whereas, it is right and fitting that we should in some appropriate manner express the feeling of sorrow and sense of loss that is ours;

"Therefore, be it resolved by the Appanoose County Bar Association that in the passing of our friend and brother, A. J. Baker, from the scenes of his earthly activities, the State has lost a true and honored citizen, the community a wise and able counsellor, his family a devoted husband and father, and the Bar a true exponent of the high ideals that should govern the profession.

"Be it further resolved; That the inspiration of the life and character of our deceased brother, his consistent adherence to, and lofty conception of, the duties and responsibilities of the profession will always be cherished by those of us who remain, as an inspiration to higher and nobler actions in our profession.

"General Baker was a man of the highest type of courage; physical, mental and moral. His physical courage was demonstrated by his service upon the field of battle; his mental courage was evidenced by the boldness with which he attacked legal problems and propositions submitted to him; his moral courage was displayed in the attitude taken by him upon the great moral

questions, regardless of the effect upon his personal welfare. He was in very truth one of God's noblemen."

CHARLES BAKER, of Johnson County. 1843-1910.

Charles Baker was born January 18, 1843, in Saratoga County, New York, and died July 1, 1910, at Iowa City, Iowa. He removed, when a child, with his parents, to Wisconsin, where his childhood and young manhood were passed on a farm cleared from the wilderness, and where he experienced the hardships and privations usual in pioneer life.

On April 24, 1861, at the age of eighteen years he enlisted as a private in Company I of the Fourth Wisconsin Regiment. He served his term of enlistment, three years, a corporal at the time of his discharge. He reenlisted and faithfully served his country until the close of the war. Soon after his discharge from military service he removed to Iowa City, studied law and was admitted to the bar before Judge N. M. Hubbard of the Eighth District, in May, 1866. He formed a partnership with Hon. J. Y. Blackwell, which continued a few years. In November, 1874, he formed a partnership with George W. Ball. This business relation continued until Mr. Baker's death, the firm being changed during the last five years by the admission of George W. Ball, Jr. to the partnership.

Mr. Baker was married in 1869 to Miss Caroline I. Blackwell, daughter of his law partner, who died August 3, 1906. He was again married on June 15, 1908, to Mrs. Minnie H. Hindman of Iowa City, who survives him. He left surviving by his first marriage, four sons; Henry C., Ray N., Irving W., and Mark E. Baker, all in business in Chicago.

He was selected by the General Assembly as one of the Code Commissioners, who prepared the Code of 1897. He spent about two years' time with his colleagues in the arduous labor necessary in the preparation of this great work, which is of inestimable value to the people, and especially to the Bench and Bar, who recognize that the work of this Commission was carefully, faithfully and efficiently performed.

He occupied a distinguished position at the bar, both in the District and Supreme Court. He was a close student, an indefat-

igable worker, a careful, painstaking lawyer, always faithful to the cause of his clients, but never seeking to win a cause by unfair or unprofessional practices. For forty-four years he occupied an enviable position at the bar, and among the citizens of Iowa City. For his ability, his upright character, and his sterling honesty, both as a lawyer and citizen, he was held in the highest esteem by all who knew him.

GULLICK H. BELSHEIM, of Winnebago County. — -1910.

Gullick H. Belsheim died at Forest City, Iowa, on the 17th day of August, 1910.

He was educated at the State University of Iowa, both as to his college preparation and in the law and upon his graduation commenced the practice of the law at Forest City, Iowa, which was the scene of all his professional life. He was County Attorney of Winnebago County at the time of his death.

The Clerk of the District Court of Winnebago County kindly furnishes the committee with a copy of the resolutions adopted by the Winnebago County Bar Association from which we copy:

"Be it resolved that during our acquaintance and service with Mr. Belshiem as an attorney and officer of the Court, extending over the past eleven years, we have ever found him attentive to his duties as an attorney, careful of the rights of his clients, courteous and considerate in his demeanor toward all. That he had a high conception of the trust imposed upon an attorney, and was prompt and fearless to condemn the wrong deed and approve the right.

"That his sudden taking away comes as a shock, and emphasizes the solemn fact that 'as to the day or hour no man knoweth'. That we miss him from his accustomed place among us and sorrow over the demise of our friend and companion in the prime and fullness of power."

THOMAS BROWN, of Muscatine County. 1835-1911.

Thomas Brown was born at Mt. Vernon, Ohio, on December 3, 1835, and died at Muscatine, Iowa, February 9, 1911. He was educated at Kenyon College, Gambier, Ohio, and did his work as a law student in a law office. He was admitted to the bar at

Davenport, Iowa, in 1875 and that same year commenced the practice of the law at Sigourney, Iowa, after which he removed to Muscatine, the whole of his professional life having been spent in these two places.

ALEXANDER BROWN, of Van Buren County. 1837-1910.

Alexander Brown was born near Carbondale, Pennsylvania, May 3, 1837, and died at Keosauqua, Iowa, August 10, 1910. Judge Brown was of Scotch descent, his father, Hugh Brown, and his mother, Mary Gibson, were both natives of Scotland and were married in that country. They were Presbyterians and emigrated to this country in 1820 or 1822, living two years at Albany, New York, then in Pennsylvania, and from there they came to the Territory of Iowa in 1842 and settled at Keosauqua, where the elder Brown in partnership with James Johnson erected and operated a flouring mill. He died in 1847, his widow surviving him thirty years, dying at the age of eighty in 1887.

His work as a law student was in the office of Judge George G. Wright in Keosauqua, Iowa, and he was admitted to the bar at Keosauqua, Iowa, in 1859 and commenced the practice of the law there at that time, spending the whole of his professional life in that city. He was Provost Marshal in the office of Robert Rutledge, Burlington, Iowa, two years; he served two years as County Judge of Van Buren County, and six years as County Auditor, at the close of which he returned to the practice.

In the fall of 1861 Alexander Brown and his brother enlisted in Company E, Fifteenth Iowa Infantry. The brother, Hugh, was made Second Lieutenant of the company and after about a year of service with the company, served on General Ord's staff for the remainder of the war, after which he joined the regular army, where he served many years, retiring with the rank of Major. Judge Brown was promoted March 1, 1862, from private to Sergeant Major of the regiment, which left Keokuk for the front on March 19, and arrived at Pittsburg Landing, Tennessee, April 6. On the first day of the sanguinary battle of Shiloh in which the regiment took part and came out with a casualty list of 213 killed, wounded and missing, Judge Brown was among the number of wounded. He recovered from his wound in time

to reach his regiment and participate with it in the battle of Corinth, Mississippi, October 3, 1862, the regiment again losing heavily, and young Brown being again wounded so severely that it not only terminated his active service in the army, but became a severe drain upon his vitality through life. He was discharged upon surgeon's certificate of disability in February, 1863, and returned to Keosauqua. In the fall of 1867 he was elected Judge of Van Buren County and held this office until it was abolished by the legislature. He was elected to the State Senate in 1881. In 1894 he was elected County Attorney, serving two terms, and he was Mayor of Keosauqua continuously for a period of ten years till 1908, when on account of growing infirmities he declined to again run for the office. He was a member of the school board and also its president at the time of his decease. He was a member of the board of trustees of the Methodist Episcopal Church, a member of the Masonic fraternity, and of the Grand Army of the Republic.

WILLIAM D. BROWN, of Monona County. 1852-1911.

William D. Brown was born at Franklin Grove, Bureau County, Illinois, October 21, 1852, and died at Onawa, Iowa, January 3, 1911. He was a graduate of the State University of Iowa, but his work as a law student was in the office of M. B. Davis of Sioux City, Iowa. He was admitted to the bar June 26, 1882, at Sioux City and commenced the practice of law there at that time, his whole professional life being spent in Sioux City and Onawa. He held the offices of Justice of Peace in Sioux City and Mayor of Onawa.

The Monona County Bar Association testify their estimate of his worth as follows:

"Resolved that in the death of our departed brother and co-worker this association and the members thereof, as well as the entire community has sustained a distinct loss; that as a friend he was not only genial and attractive, but always loyal, consistent, and true; that in the several offices and positions of trust which he from time to time held, he uniformly performed the duties of his office with fidelity and credit; in business he was ever diligent and trustworthy, always liberal, considerate, and

obliging; as a citizen and as a man he was of high character and was always aligned on the side of right and took a deep personal interest in things tending toward the welfare of the community."

WM. J. BIRCHARD, of Scott County. 1844-1911.

Wm. J. Birchard was born at Troy, New York, March 13, 1844, and died at Davenport, Iowa, April 19, 1911. His work as a law student was in an office. He was admitted to the bar at Davenport, Iowa, in 1876, and was there engaged in the practice of the law. He was for a time at Denver, Colorado. He was for ten years Clerk of the District Court for Scott County.

WARREN CHASE, of Buchanan County. 1843-1911.

Warren Chase was born October 14, 1843 at Elliottsville, New York, and died January 27, 1911, at Quasqueton, Buchanan County, Iowa. His work as a law student was in an office. He was admitted to the bar at Independence, Iowa, February 22, 1876, and commenced practice the same year at Quasqueton, Iowa.

JAMES W. CLARK, of Linn County. 1874-1910.

[Information received too late for report of last year.]

James W. Clark was born at Webster City, Iowa, May 11, 1874, and died at El Paso, Texas, on his way home from California, on May 10, 1910. He was educated at Leland Stanford University, California, and took his law course at Drake University, Des Moines, Iowa, and was admitted to the bar in June, 1897. He commenced the practice of the law at Cedar Rapids, Iowa, the same month and this was the scene of his whole professional life.

PHINEAS WHITE CRAWFORD, of Dubuque County. 1830-1910.

Phineas White Crawford was born at Putney, Vermont, September 21, 1830, and died at Dubuque, Iowa, December 11, 1910. He had his college course at Jacksonville College, Jacksonville, Illinois, and his work as a law student partly in college and partly in an office. He was admitted to the bar at Dubuque, Iowa, on the 8th day of October, 1851, and commenced the practice of the law there that same year. His professional life was spent in

Dubuque except when as attorney for the M. K. & T. Railroad Company, he had headquarters at Hutchinson, Kansas, for several years. He was City Recorder of the city of Dubuque from 1854 to 1858, Alderman of the fourth ward some sixteen years, and State Senator from Dubuque County for four years.

JACOB C. DAVIS, of Linn County. 1843-1909.

[Information received too late for report of last year.]

Jacob C. Davis was born in Baden, Germany, September 15, 1843, and died at his home in Marion, Iowa, December 3, 1909. He was educated in the public schools of Marion and did his work as a law student in an office. He was admitted to the bar at Marion, Iowa, July 14, 1863, and commenced the practice of the law in partnership with Thomas Corbeth at Marion, Iowa, the same year. His professional life was all at Marion, Iowa. He was at different times Mayor and City Attorney of Marion, Iowa, and County Attorney of Linn County.

The local Bar Association of Linn County by resolutions say of Mr. Davis that "he was a citizen active in all of the affairs of life, who was a pioneer in this part of the State, and was instrumental in the organization of the 'Old Settlers' Association of Linn County' which has done so much to preserve to this and future generations the evidences of the hardships of pioneer life, and in his death the community has lost an active and true citizen and his family a loving and indulgent father and husband."

JONATHAN PRENTISS DOLLIVER, of Webster County. 1858-1910.

Jonathan Prentiss Dolliver was born at Kingwood, Preston County, Virginia (afterwards West Virginia), February 6, 1858, and died at his home at Fort Dodge, October 15, 1910.

He was educated in the University of West Virginia, and his work as a law student was in a law office. He was admitted to the bar at Fort Dodge in 1878, at which time he commenced practice at that place which was his home from that time until his death. He was Representative in Congress from the Tenth Iowa District from 1889 to the first Monday in December, 1900. He resigned to become Senator in place of John H. Gear, who died July 14, 1900, Senator Dolliver having been appointed by

the Governor on August 22, 1900, to fill out the vacancy. Senator Dolliver was elected by the Twenty-ninth General Assembly, January, 1902, to fill out the balance of the term ending March 4, 1907, and reelected by the Thirty-second General Assembly for the term ending March 4, 1913.

Senator Dolliver was one of the great men of Iowa; he grew to be great in Iowa, having come to the State a mere boy. He impressed himself upon the State and her institutions and it would be impossible to write the State's history without writing much of him. His name for the last twenty-five years of his life was familiar to every man and woman in Iowa and to all children old enough to attend school.

The Webster County Bar Association have recorded their estimate of Senator Dolliver in the following resolutions:

"Whereas, it has pleased Him who is all-wise to remove the burdens of life from our beloved Senator Dolliver, who for thirty-two years honored the Webster County Bar with his membership, and

"Whereas, he came among us a stripling youth with the gift of speech; he was taken from us in the prime of his manhood; the nation mourns, 'A great man has fallen,' and

"Whereas, in the loss of him, his aid and the good of his example, we suffer in common with his State and country,—his country a patriot, his State a loyal son, and we a friend whose cheerful life and kindly smile it did men good to see and know, and

"Whereas, the sympathy of our hearts goes out to those beside whose loss all others signify little, his dear wife and son and daughters,

"Therefore, be it resolved, that it is with profound grief that we note the untimely death of this great man. His life not only shed its light on the great problems of state, but beyond and more, it embraced in a broad Christianity the warm feeling and kindness of heart that comes only from God's own. May his great soul rest in peace.

"Be it further resolved that this resolution be recorded in the records of this association and the records of the District Court

of Webster County, and that a copy thereof be transmitted to Mrs. Dolliver."

THOMAS ETHAN ELWOOD, of Jackson County. 1845-1911.

[From the records of the local bar and papers.]

Thomas Ethan Elwood of Jackson County, Iowa, was born August 2, 1845, in Mercer County, Pennsylvania, and died at Maquoketa, Iowa, January 5, 1911.

His work as a law student was in an office, and he was admitted to the bar in Andrew, Jackson County, Iowa at March term, 1868, and at once commenced the practice of the law in that county. He was for a time at Andrew and then at Maquoketa, which was his home at the time of his death.

His parents, James and Jane Elwood, removed to Iowa in 1855, settling in Fairfield township, Jackson County, Iowa, where the subject of this sketch, who came with them, grew to manhood. He received his education in the common schools and studied law with Darling & Darling in Andrew, teaching school in the winter seasons. He was united in marriage with Mrs. Sarah Jenkins Chamberlain, who survives him. They had no children of their own, but gave the parents' care and love to several in their home. He is credited with being in many respects a remarkable man, strong in his friendships, intense in his affections, warm hearted, sympathetic and loyal, faithful and zealous for all those for whom he labored, regardless of the fee. It is said of him that probably no lawyer in the county settled more cases out of court or untangled more knotty situations than he.

WILLIAM PITT FERGUSON, of Page County. 1843-1910.

William Pitt Ferguson was born July 29, 1843, at Glasgow, Scotland, and died at Shenandoah, Iowa, on October 15, 1910. He was educated at an academy in Ohio, doing his work as a law student, however, in an office. He was admitted to the bar at Sidney, Iowa, in 1869, and the same year commenced the practice of the law at Hamburg, Iowa, removing to Shenandoah in 1870, where he spent the remaining years of his life. The town dates from August 6th, 1870, and he was its first lawyer and one of its earliest and best mayors. He was County Attorney of Page

County two terms and Judge of the Superior Court of Shenandoah a part of two terms. He was a member of Company B, Fifth Independent Battalion Ohio Cavalry and later of a company of U. S. Engineers.

The local Bar Association of the city of Shenandoah records its estimate of Judge Ferguson in these words: "*Be it resolved* by the Bar of Shenandoah, all members present, That in the death of Judge Ferguson, the honest man and upright Judge, the Bar and city of Shenandoah have sustained a loss that will be long felt and remembered with regret."

WILLIAM FRANKLIN FITZGARRALD, of Linn County. 1853-1909.

[Information received too late for report of last year.]

William Franklin Fitzgarrald was born at Center Point, Iowa, January 25, 1853, and died at Excelsior Springs, Missouri, December 14, 1909. He was educated at Cornell College and did his work as a law student in the office of Colonel Preston. He was admitted to the bar at Marion, Iowa, in 1877, commencing the practice of the law at Center Point in that year. Later he moved to Marion where he was made Mayor of the city, and was President of its Board of Education.

The local Bar Association of Linn County, Mr. Fitzgarrald's neighbors, by resolutions, say of him:

"The Bar of Linn County, Iowa, has lost in the death of William F. Fitzgarrald one of its most honored and respected members; one who reflected credit upon the profession; he was a worthy opponent and judge of the law, a good trial lawyer, and a safe counsellor. He worked faithfully and earnestly for the success of his cause and advised settlement where possible. He highly prized the confidence and esteem of the members of the Bar and the public generally, and his word or promise was regarded good by all who knew him. He was pleasant and agreeable under all circumstances. His strong personality with his pleasant and sympathetic nature coupled with his legal knowledge made him friends and clients. His advice upon general matters of business was good. Judges, lawyers, and laymen alike relied upon his word. His character and honesty were never questioned."

HORACE W. GLEASON, of Mahaska County. 1846-1911.

Horace W. Gleason was born at Warren, Grafton County, New Hampshire, on the 2nd day of May, 1846, and died at Oskaloosa, Iowa, April 20, 1911. He was educated at Dartmouth College and did his work as a law student in an office. He was admitted to the bar in Toledo, Iowa, in 1869 and commenced the practice of the law at Monroe, Iowa in 1870, where he remained for two years, then removing to Oskaloosa where he practiced for fifteen years, then to Hutchinson, Kansas, where he remained nine years, and thence to Illinois where he remained five years, and again at Oskaloosa since 1901. He was Representative from Mahaska County in the Seventeenth General Assembly, was United States Commissioner for the Southern District of Iowa, County Attorney, and City Solicitor.

The local Bar Association of Oskaloosa by resolutions, prepared by Honorable John F. Lacey, Irving C. Johnson, and John O. Malcolm, testify of Mr. Gleason:

"Resolved that in the professional life of our departed brother, Honorable Horace W. Gleason, we have a fitting example of the courteous and faithful lawyer. In public life the patriotic soldier, the honest legislator, and in private life the upright citizen, adopting for his life work a profession necessarily made up of successes and defeats our brother, whether in one or the other, gave no offense nor held feeling of resentment. We commend the private, public, and personal life of our deceased brother as worthy of the highest commendation and make this public testimonial thereof."

JOHN D. HORNBY, of Harrison County. 1835-1910.

John D. Hornby was born in the State of Maine January 1, 1835, and died at Logan, Iowa, October 7, 1910. He was admitted to the bar at Centerville, Iowa on October 3, 1870. So far the committee has been unable to obtain any further history of Mr. Hornby.

THEODORE W. IVORY, of Mills County. 1848-1911.

Theodore W. Ivory was born at Marshall, Michigan in 1848, and died at Glenwood, Iowa, April 21, 1911. His work as a law

student was in an office and he was admitted to the bar at Glenwood, Iowa, in 1878, and commenced the practice of the law at that place the same year. He was Postmaster at that place for a time.

LEWIS LICHTY, of Black Hawk County. 1828-1911.

Lewis Lichty was born at Somerset County, Pennsylvania, on February 29, 1828, and died at Waterloo, Iowa, February 6, 1911.

He was educated at Mt. Pleasant College, Pennsylvania, and read law in the office of Jeremiah Black, who was Attorney General in the Cabinet of President Buchanan. He commenced the practice of law in Somerset County, Pennsylvania, but its date is not obtainable, nor have we been able to learn the date of his admission to the bar.

In Iowa his location was at Waterloo, since 1864. He was the first City Attorney of Waterloo, was Mayor from 1873 to 1876 and several times later. He was also the first secretary of the Masonic lodge of Waterloo.

HARRISON MCNEIL, of Warren County. 1834-1910.

Harrison McNeil was born near Warsaw, Indiana, on September 15, 1834, and died at Indianola, Iowa, September 22, 1910. He had his college education at the University of Indiana, and his work as a law student was done in an office. He was admitted to the bar in Des Moines, Iowa, in 1862, and that same year commenced the practice of the law at Indianola, Iowa, which was his home during the whole of his professional life.

The testimony of the Bar Association of Warren County in resolutions prepared by Honorable W. H. Berry and O. C. Brown is written as follows:

“His record at this bar is an honorable one. Engaged in much of the important litigation of the county for more than forty years, he maintained the confidence of the members of the bar and of his clients and of the people.

“His client's interest was always his interest and no man who ever employed him had any occasion to fear that he would be betrayed by his attorney. He was earnest, emphatic, and aggressive in his practice when he believed that was for the good

of his cause, mild and compromising when that seemed to him best, but always true to his clients.

"With the court and counsel he was fair and reliable. No judge need fear that he would take advantage of confidence placed in him. No lawyer ever doubted his keeping his agreements, whether verbal or in writing, and no client who sought to repudiate agreements made by him in the process of a litigation would ever repeat it.

"The members of the Bar of Warren County hereby record their high appreciation of the worth of Harrison McNeil, as an officer of the Court, as a lawyer, as a man, and ask the Court to order that this resolution be entered in the records."

BENJAMIN HUBER MILLER, of Jones County. 1845-1911.

Benjamin Huber Miller was born in Rome township, Jones County, Iowa, April 10, 1845, and died at Anamosa, Iowa, March 9, 1911. He was educated in the high school at Lisbon, Iowa, and did his work as a law student in the office of T. Pierce, and was admitted to the bar at Anamosa, Iowa, in March, 1875. He at once entered upon the practice of the law, and spent his whole professional life in Olin and Anamosa, Iowa. He was Judge of the Eighteenth Judicial District of Iowa from 1903 to 1906.

We glean from the resolutions of the Jones County Bar Association that Judge Miller prepared himself for his life work in the village of Olin; that we was a boy in a pioneer family and had not the advantages of college or law school, and that he was not a rugged boy, perhaps not physically a strong man, but that through his indomitable will, unaided and alone, he mastered the mysteries of the law and arose from a farmer's boy to a most excellent people's judge, an accomplishment for the most ambitious to emulate. -

ABRAM MIDDLESWORTH, of Polk County. 1878-1911.

Abram Middlesworth was born at Shelbyville, Illinois, March 13, 1878, and died at Des Moines, Iowa, March 1, 1911. He was educated at Drake University and was admitted to the bar, at Des Moines, Iowa, in May, 1908, and commenced the practice of the law there at once; the whole of his professional life was spent

in that city. Memorial exercises by the local association of Polk County are to be held later.

GEORGE A. RICHARDSON, of Crawford County. 1857-1911.

George A. Richardson, of Crawford County, Iowa, was born at Attica, New York, April 27, 1857, and died at Denison, Iowa, April 6, 1911. His work as a law student was in a law office and he was admitted to the bar at Denison, Iowa, in 1894, and commenced the practice of the law in 1899 at that place. He served two terms as County Treasurer of Crawford County, and at the time of his death was Secretary of the School Board of Denison, Iowa.

SAMUEL CREW SCOTT, of Clinton County. 1860-1911.

Samuel Crew Scott was born at Lyons, Clinton County, Iowa, September 1, 1860, and died at the same place April 13, 1911.

He had his school and college preparation in the public schools of Lyons and the State College at Ames. His work as a law student was in an office and he was admitted to the bar at Clinton, Iowa, in June, 1884, and commenced the practice of the law the same month in that city, which was the scene of all his professional life. He was City Solicitor of the city of Clinton, member of the Lyons School Board and member of the Fire and City Police Commission of the city of Clinton, which position he occupied at the time of his death. He was a member of Lyons lodge No. 93 A. F. and A. M., and was a thirty-second degree Mason. His accomplishment as an orator led to his selection for many public addresses and addresses of welcome and Decoration Day addresses, etc. He was a member of the First Congregational Church of Lyons of which he was one of the trustees, and he was a regular attendant at the Sunday services.

The local Bar Association of Clinton by resolutions testify that Mr. Scott was an excellent lawyer, peculiarly strong as a counsellor. By study, energy, perseverance, and industry, he won an enviable position as a lawyer. Serenely, earnestly, persistently, and faithfully he served his clients, performed his duty as a citizen, and conducted himself with that integrity which commands our admiration and inspires us to emulate his fine example.

EDWARD LASHELLES SMALLEY, of Bremer County. 1847-1910.

Edward Lashelles Smalley was born at Muncy, Pennsylvania, on the 23rd day of January, 1847, and died at Waverly, Iowa, on the 24th day of June, 1910. He was educated at Hanover College, Hanover, Indiana, and his work as a law student was in an office. He was admitted to the bar at Waverly, Iowa, November 14, 1874, and commenced practice at that place in January, 1875, which was his home until his death. He was referee in bankruptcy.

JOHN S. STANBERY, of Cerro Gordo County. 1846-1911.

John S. Stanbery was born in Mercer County, Ohio, September 28, 1846, and died at Mason City, Iowa, March 24, 1911. He was educated in the State University of Iowa and took his law course there and was admitted to the bar at Mason City, Iowa, in 1870, commencing the practice of the law in that city in 1871 and spent his whole professional life there. He was for a time Justice of Peace and was a member from Cerro Gordo County of the Thirty-first and Thirty-second General Assemblies of Iowa.

WILLIAM GEORGE THOMPSON, of Linn County. 1830-1911.

William George Thompson was born January 17, 1830, in Center township, Butler County, Pennsylvania, and died April 2, 1911, at Kenwood Park, Iowa. He was educated at Witherspoon Institute, Pennsylvania, and did his work as a law student in the law office of Judge Daniel Agnew. He was admitted to the bar in 1853 in Butler County, Pennsylvania, and commenced practice January 1, 1854, at Marion in Linn County, Iowa, where he spent the whole of his professional life. He was State Senator in 1856, Prosecuting Attorney, 1870, Territorial Judge of the Territory of Idaho, Member of Congress 1879 to 1882, State Representative in 1885, and Judge of the District Court of Iowa in and for the Eighteenth Judicial District, 1894 to 1906.

Judge Thompson was one of the most interesting characters in all of Iowa. In many features he was a great man. The local bar thus records its estimate of him:

"In point of ability as an advocate he had few superiors. We think we hazard nothing in saying that there was no man per-

sonally more popular and more generally beloved by the members of the bar of the Eighteenth Judicial District, as well as by the public generally. His uniform courtesy, his unfailing kindness, and sympathy endeared him to all his acquaintances. In all his relations of life he was a manly man, clean, respected, and honored by all who knew him. While we will miss his kind, genial greeting and his kindly presence, yet we can never forget him as an honored member of the bar, nor fail to feel the influence of his life and example."

THOMAS UPDEGRAFF, of Clayton County. 1834-1910.

Thomas Updegraff was born in Tioga County, Pennsylvania, April 3, 1834, and died at McGregor, Iowa, October 5, 1910. He came to Iowa in 1855 and was Clerk of the District Court of Clayton County from 1856 to 1860 and was admitted to the bar in 1861. He was a member of the Iowa House of Representatives in 1878. He represented the Fourth Congressional District of Iowa in the Forty-sixth and Forty-seventh Congresses and also in the Fifty-third to Fifty-fifth. For a time at McGregor he was a member of the law firm of Odell & Updegraff and later of the firm of Noble & Updegraff. He was a delegate to the Republican National Convention in 1888 and a member of the notification committee. Was a member of Garnaville Masonic lodge. He was twice married and left surviving him two daughters.

DAVID JOHNSON VINJE, of Story County. 1850-1910.

David Johnson Vinje was born at Voss, Bergen Stift, Norway, on February 20, 1850, and died at Nevada, Iowa, June 18, 1910. He was educated at Whitten and Simpson Colleges and did his work as a law student in a law school. He was admitted to the bar at Des Moines, Iowa, in June, 1876, and commenced the practice of the law at Nevada, Iowa, the same year, and this was the scene of his whole professional life. He was County Attorney of Story County for two terms.

WILLIAM PERRY WHIPPLE, of Benton County. 1856-1910.

William Perry Whipple was born in Vinton, Iowa, December 26, 1856, and died at Vinton on the 6th day of June, 1910. He

had his college education in the State University of Iowa and his work as a law student was in the law department of the University. He was admitted to the bar at Vinton, Iowa, in June, 1878, and commenced the practice of the law there that same year. This was his home and the scene of the labors of his professional life. He was City Attorney of Vinton, Iowa, and Senator of the Fifth Senatorial District in the Twenty-ninth to the Thirty-third General Assemblies of the State of Iowa.

THE PRESIDENT: Next is the report of delegates to the American Bar Association.

J. B. WEAVER, JR.: *Mr. President and Gentlemen of the Association:* At your session in 1910 Hon. J. L. Carney, Mr. F. F. Faville, and myself were named by this Association as delegates to the annual meeting of the American Bar Association to be held August 30 to September 1, 1910, in the city of Chattanooga. Your president, Mr. Carney, and Mr. Faville being unable to attend the meeting by reason of imperative engagements elsewhere, the writer alone of the Delegates named was present. Your Association, however, was also represented in fact by the attendance of a number of gentlemen, among whom were that veteran beloved of us all, Hon. James O. Crosby, E. M. Carr, Esq., of Manchester, E. B. Evans, Esq., Dean of Drake University Law School, Mr. Charles A. Dudley of Des Moines, Mr. E. Dean Fuller, now of Mexico City, and Mr. Wallace R. Lane, now of Chicago.

The session opened August 30 with an address of welcome by Senator Frazier of Tennessee, an eloquent and well-timed address marked by the traditional southern spirit of hospitality, welcoming us to the South or, to use one of his own phrases, "To her genial sunshine and, if you are very thirsty, to her still more genial moonshine." This was followed (after a proper interval, for the weather was very warm) with the address of President Charles F. Libby of Maine, devoted, pursuant to the rules of the Association, to the most noteworthy changes in statute law in points of general interest arising during the preceding year. It was a splendid address, patriotic in spirit, strong in conservatism that was yet constructive, and exhibiting a comprehensive

grasp of the march of jurisprudence at home and abroad. In this address will be found among other things an interesting and instructive discussion of modern tendencies looking to the widening of the Constitution by new methods of construction, that may well be studied by every lawyer interested in what promises to be a far-reaching movement fraught with most important results to our political and social framework.

Among noteworthy changes in statute law the President dealt at length with increased legislation relating to agriculture, with the rapidly growing statutes governing automobiles and motor boats, with notable changes in the banking laws of Massachusetts, Ohio, New York and New Jersey, the laws on the protection of immigrants, the matter of child labor, the conservation movement, the negro suffrage amendments in the South, taxation, employer's liability, and sundry other items, including an interesting review of the novel and intricate questions arising in connection with recent triumphs in aviation.

On the evening of August 31 Hon. Woodrow Wilson addressed the association upon the theme, "The Lawyer and the Community"—an extremely valuable contribution to the question of the lawyer's relation to the community in the light of corporate development in America. This address displayed that vigor of intellect, patriotic spirit, and facility of expression that have been evidenced since in a wider field—a field concerning whose limits, indeed, it were unwise at present to dogmatize.

An incident that caused some excitement and great indignation among the delegates was the formal filing with the Association of the charges preferred by James R. Watts against Hon. Joseph H. Choate of New York. This action by a member of the Tennessee Bar was promptly resented by the Association of that State and the charges and request of the mover for leave to withdraw same were referred to the grievance committee of the Association with the practically unanimous feeling of the lack of foundation, and of the utter impropriety of the filing of the petition, the same in any case belonging to the concerns of the New York Association in the first instance.

Among the most active, effective, and trusted workers at the meeting was our former Iowa comrade, Hon. Frederick W. Leh-

mann, late President of the Association and now, to the surprise of no one, a strong force, standing, as ever, vigilant and aggressive at the right hand of Uncle Sam—one of the real working units in that intricate mechanism out of whose processes is woven in the loom of time that priceless fabric—national progress—and that means world progress.

For the ensuing year the Association chose as its President Hon. Edgar H. Farrar of New Orleans, a choice warranted both by the fitness of him who was chosen and by the great awakening of interest in the work of the Association that has been aroused in the last two years among members of the bar in the South, an interest greatly augmented by the presence of the Association in annual meeting in a southern State.

With respect to legislation recommended by the Association for adoption by the various States may be noted the report of the Committee on Uniform State Laws with respect to the following:

1. An act to make uniform the law of transfer of shares in corporations.
2. An act to make uniform the law of bills of lading.

Both of these acts are of considerable length and that relating to the transfer of stock may be deemed by many little short of revolutionary, its purpose being to give to stock certificates a practically complete negotiability such as is now applied to ordinary negotiable instruments. This may well arouse great diversity of opinion as it did in the Association. Both acts contain many sections and may properly go for full consideration to the committee of this Association dealing with uniformity of law. The acts will be found on pages 574 to 610 of the report of the session for 1910 of the American Bar Association.

Mr. Simeon E. Baldwin of Connecticut offered a resolution dealing with aviation, which was referred to the Committee on Jurisprudence and Law Reform. This resolution directed the committee to inquire and report whether the common law makes an aviator liable for any loss or damage that may occur independently of negligence and whether an airship flying between the States or foreign countries is subject to regulation by Congress under the power of the latter over commerce between the States and with foreign countries. There was much discussion

and work in the committee concerning a reorganizing of the Federal Courts and a new Federal Practices Act. No doubt the more important considerations before the Association have been dealt with and will be found to be covered by the new Judiciary Act of March 3, 1911, reorganizing and simplifying our system of Federal Courts. The committees of the Association have long been in conference with committees of Congress in this connection.

The Chattanooga meeting was well attended and notwithstanding the extreme heat was an active and effective session. Many courtesies were extended the delegates, the well-known historic setting of the city itself contributing greatly to the pleasure and interest of those in attendance.

Mr. President, I have only hinted in the last sentence at a phase of the Chattanooga meeting, or rather an influence to which it was subject, growing out of the wonderful historic environment of that city. May I ask your indulgence and speak a moment longer concerning this matter. I do so the more willingly, perhaps, because in the tremendous constitutional conflict culminating in the Civil War, our profession bore a signal part. We have Webster and Marshall and their co-workers who dreamed of and crystallized for us the priceless ideal of National Unity. We have Lincoln whose mighty task it was to hold aloft that ideal and to bear it through the fires of conflict to the peaceful realm of accomplished fact. And in the days just following we of Iowa may take pride in our contribution of men like Samuel F. Miller of the Supreme Court whose duty it was to re-weave into a garment having all its old time glory, the torn fabric of our national life. And so of the meeting at Chattanooga where on every horizon line monument and tablet and grave stone stand as reminders of the sacrifices of which our civilization of today is the fruit, it is proper that I should tell you that the greatest achievement of that meeting of lawyers from the North and South was the deeper inspiration carried away by every delegate toward a life of patriotic devotion.

Chattanooga, now a city about the size of Des Moines, is situated upon the east bank of the Tennessee River that, coming from the north, sweeps first to the southeast about the foot of

Lookout Mountain, then back to the northwest, thus completing the famous Moccasin Bend. Lookout Mountain rises precipitately eighteen hundred feet above the river, the crest thereof a rugged crag from which may be viewed portions of seven States. To the left of the mountain is Chattanooga Valley and on the left of that and north lies that rugged line of wooded hills, rising five hundred feet or more above the valley, known as Missionary Ridge. Off a few miles to the southeast is the famous battlefield of Chickamauga. Here in September, 1863, in a dense wood, struggled 110,000 men. We were taken over the field where everywhere are reminders of the awful conflict.

The field is marked by hundreds of monuments and tablets, indicating points where engagements took place, where losses were heaviest, and the position of the various regiments engaged. Here are the little fields and quaint log cabins which still bear the impress of the fight. Trees abound whose tops have been shot off and in whose trunks are imbedded cannon balls and shells, where nature is now endeavoring with her greenery to cover the wounds of war. Here is Snodgrass Hill where the forces of Thomas almost alone held in check the Confederate forces and preserved Rosecrans in his retreat to Chattanooga from what would have been complete rout. It is a lesson in patriotism to go over this bloody field. The Union troops were defeated and withdrew to Chattanooga. The Confederates followed and fortified Lookout Mountain, Missionary Ridge and the intervening valley. Having possession of the mountain, they cut off the only railroad connection with Chattanooga, the line of railway entering the city along a ledge at the foot of the mountain at the margin of the river. For two months the Union forces were thus under siege and suffered great privation and loss. Finally Rosecrans was relieved and Grant took command. Sherman by a night movement led a force concentrated upon the east bank of the river, opposite the north end of Missionary Ridge. Hooker with his forces was sent to Lookout Valley to the west of the mountain. Heavy forces were retained in the Union center at Chattanooga to coöperate in the attack. Sherman began his attack at the north end of the ridge on the Confederate right and at the same time Hooker was directed to attack Lookout

Mountain. To the north was heavy fighting. During Hooker's advance upon the mountain there was a storm which rendered the field of conflict invisible to those in the valley. Up the mountain side came Hooker's men, fighting as they came, until they reached the ledge of the mountain just below its crest, where were the Confederate headquarters in what is known as the Craven House. Here the conflict was bitter, but inch by inch the Confederate position was taken and when the morning of the second day came Grant's troops in the valley and Sherman's at the north end of the ridge could see our flag floating over the crest of Lookout Mountain.

This famous "battle above the clouds" was one of the most dramatic engagements of the war. Word was sent to Hooker to press down the mountain into Chattanooga Valley and thence across to Rossville Gap at the south end of the ridge. Fighting began at both ends of the ridge, and was supplemented by an advance from the Union center upon the rifle pits at the foot of the ridge opposite Bragg's headquarters. The rifle pits were taken but the troops went on up the mountain. This further advance was pursuant to no orders, but was due to the well known initiative of the American soldier. This continued attack upon the right, left, and center of the Confederate position resulted in a bitter conflict and great loss of life. At length the Confederate positions all along the ridge were taken and the enemy, defeated, were forced off into the broken country to the east.

The delegates were taken all over these historic fields, and every delegate, whether from the North or the South, was thrilled by the reminders on every hand of what is now our common heritage—the valor of the American soldier in the Civil War. Among the delegates visiting these fields were many old soldiers from both sides of the conflict and I could but feel that here was a fulfillment of the prophecy contained in the never-to-be-forgotten words of Lincoln:

"The mystic chords of Memory stretching from every battlefield and patriot grave to every loyal heart and hearthstone in this broad land, will yet swell the chorus of the Union when touched as surely they will be by the better angels of our nature."

After being taken with the delegates over Lookout Mountain I went again alone. As I reached the crest a storm swept over the mountain, hiding the valley below just as it did on that November day in 1863. Working my way by footpaths down the face of the mountain I came to a little ledge about a hundred yards wide where stood the Craven House and where took place the bitterest fighting. Here I encountered the beautiful shaft erected by the State of Iowa as a memorial to her troops. Here upon the side of the mountain fifteen hundred feet above the valley stands that noble memorial to the valor of the boys of Iowa. Upon its face is inscribed this prayer in which every patriotic soul must today join:

"May the heroism which dedicated this lofty field to immortal renown, be as imperishable as the Union is eternal."

THE PRESIDENT: I am very sure the Association will be very glad to have this interesting and inspiring report of the American Bar Association placed upon record.

Passing the reports of any other committees now, we will take up the first paper on the program—"The Lawyer as a Patriot", by Justice John C. Sherwin, Mason City.

THE LAWYER AS A PATRIOT

The subject that I have chosen for this necessarily brief paper is as broad as the history of the world. Indeed, were full justice to be done it, volumes would be required to present to the profession in the most condensed form the splendid achievements of its members as statesmen and as patriots. From the very beginning of organized society, the lawyer has taken a large and a leading part in shaping the policy and the destiny of state and nation. It is not my purpose, however, to do more than to call your attention to a very few of the great number of lawyers whose names and public services are a bright and lasting part of the history of our own country, and in making my selection I have been guided by no thought of belittling the work and ability of those who are not the immediate subjects under consideration. I have only attempted to present a few thoughts concerning the men who have always commanded my deepest admiration and

have appealed to me as worthy of the highest esteem and admiration of the profession and of people generally. The three great events in our history as a nation are the Declaration of Independence, the Adoption of the Constitution, and the Civil War, and in each of these events and in the debates and agitation preceding them, lawyers took conspicuous parts and were, at least, among the foremost in securing to the people of this great Republic the blessings which they today enjoy.

All American citizens pay willing homage to all of the great men of the Revolutionary Period, but no one of these great men, except perhaps Washington, manifested more exalted patriotism and unselfish devotion to public interests than did John Jay, the lawyer, statesman, and jurist. He was admitted to the bar in 1768, at the age of twenty-three, and soon obtained a good practice for those times. His career at the bar was brief, however. While he was inclined to be conservative relative to the impending conflict between the colonies and the mother country, when the colonists decided upon a separation, Jay became at once aggressive and was chosen to represent the citizens of New York on the committee selected to settle questions arising out of the Boston Port Bill. While acting on that committee, he drafted the suggestion of the committee that "a Congress of Deputies from the Colonies in general" be convoked, which, in fact, resulted in the Continental Congress.

New York sent him as a delegate to the first and second Continental Congresses. When he entered the first Congress in 1774, he was but twenty-nine years of age and was scarcely known beyond the boundaries of his own State. He was made a member of the committee appointed to "state the rights of the colonies in general", and by direction of that committee he prepared an address to the people of the mother country, which was reported to Congress and adopted. The paper was everywhere praised. Jefferson, without knowing its author, said that it was the production of the finest pen in America. Webster declared that it stood at the head of the incomparable productions of the first Congress, productions which Lord Chatham pronounced not inferior to those of the master minds of the world. It is, therefore, not at all strange that when the session of the first Congress

ended, this young lawyer went from its halls with a national reputation as a statesman and a patriot, and that the public demand for a continuation of his patriotic services should be earnest and persistent. So great was the confidence of his fellow members of Congress in his ability and patriotism that they later elected him President of that body.

In 1776, Jay was elected to the Provincial Congress of New York and made chairman of the Committee of Public Safety. In 1777, he drafted the first constitution of the State of New York, and was appointed Chief Justice of the State under such constitution. In 1779, Congress sought to induce Spain to concur with France in recognizing the independence of the United States, and Jay was selected to conduct the negotiations therefor. That he failed in that mission was not due to any lack of ability or tact on his part. Congress then sent Jay to Paris to act with Franklin, Adams, Jefferson, and Laurens in settling the terms of the treaty of peace with England, and there his service was of such high character as to call from the English Minister in Paris the statement that to Jay was due the chief credit of bringing the negotiations to a satisfactory conclusion.

After the first election of Washington as President, he appointed Jay Chief Justice of the Supreme Court, but it was not long before his services were demanded for a delicate mission abroad, and on the 16th of April, 1794, he was nominated, and on the 19th of April confirmed as Envoy Extraordinary to England. The policy of England following the treaty of 1784 had been exceedingly annoying and offensive to this country and had created a feeling of hostility that was likely to embroil us in another war with her. Washington realized that we were wholly unprepared for war and selected Jay as the one man whose experience, patriotism, and diplomacy could secure for the nation at least a part of its demands and postpone a conflict until we should be better prepared for it. The treaty of 1794 was the result of Jay's mission to England, and while it was not entirely satisfactory to him or to Washington, it was finally ratified by Congress. The treaty brought down upon Jay the vilest calumny, but the wisdom of his action soon became apparent, however, and he soon again commanded the entire confidence of the people.

He was elected Governor of New York while in England and was reëlected in 1798. He filled the office of Governor of a great State with the same conspicuous ability that had characterized his previous official career, and refused a renomination because of his determination to retire from public life; and such determination was not shaken by his subsequent appointment by President Adams as Chief Justice of the same Court over which he had once presided and his confirmation by the Senate.

After twenty-eight years of active public life in one of the most critical periods in American history, Jay retired to the quiet and rest of private life, beloved and admired by all of the people. As has been said by a brilliant writer, Jay was "an able and sagacious statesman, an enlightened jurist, an accomplished diplomat, a sincere and unfaltering patriot, whose wellnigh faultless career shines across the intervening century with a serene and wholesome radiance that not only excites our admiration and gratitude, but quickens the pride and enriches the heritage of every American citizen".

Reference to the adoption of the Constitution naturally follows what has already been said. Historians say, and I think the statement is generally accepted as true, that out of the fifty-five members of the Convention, nine men were the most conspicuous in the adoption of the Constitution, and of these nine men seven were lawyers. They were Hamilton, Madison, Morris, King, Pinckney, Wilson, who afterwards became a Justice of the Supreme Court, and Edmund Randolph. All were able lawyers and statesmen who had been prominent in the events leading up to the adoption of the Constitution. All were true patriots, working with the unselfish and single purpose of securing for the people of this new nation a constitution that would endure forever. And what a wonderful instrument was produced! Except for the three amendments adopted at the close of the Civil War, it has remained unchanged for more than a hundred years, the wonder and admiration of the whole civilized world. It is an instrument whose fixibility has established its permanence, for in such fixibility lies the strongest guarantee of the permanence of the government. A constitution incapable of yielding to the growing and changing views and purposes of a

great nation must, sooner or later, be carried down by its own weight, while an instrument which yields to the urgent necessities of the times contains within itself elements which will sustain it for all time. The framers of the Constitution erected a monument to their ability and patriotism which will be as lasting as time itself.

All of the lawyers who had a part in this great work do receive the homage of their profession and much might be said in praise of each, but my purpose at this time is to deal with but one of these illustrious men.

No intelligent student of the Constitutional History of the United States will fail to recognize Alexander Hamilton as one of the great minds of the world. For years preceding the adoption of the Constitution he had been advocating principles tending to consolidate the Union and formulating plans to attain that end. He was a close student of government and had familiarized himself with the various systems that had theretofore existed. He was by nature, temperament, and equipment better qualified for the position he occupied in relation to the Constitution than any other man. Curtis says that "his great characteristic was his profound insight into the principles of government, the sagacity with which he comprehended all systems, and the thorough knowledge he possessed of the working of all the freer institutions of ancient and modern times, united with a singular capacity to make the experience of the past bear on the actual state of society, rendered him one of the most useful statesmen that America has known. Whatever in the science of government had already been ascertained, whatever in the civil condition of mankind in any age had been made practicable or proved abortive, whatever experience had demonstrated, whatever the passions, the interests, or the wants of men had made inevitable, he seemed to know intuitively."

Hamilton was a mature man in intellect before he was thirty years old, and from the age of twenty-three until his untimely death at the early age of forty-seven he gave his best intellectual efforts to his adopted country. He believed in the efficacy of publicity for the advancement of correct principles, and in written appeals to the intelligence and honesty of his countrymen.

He was the chief author of the *Federalist* and his papers therein, together with those of Madison and Jay, will be read with admiration and wonder as long as there are readers of books.

Hamilton was born a statesman, and in brilliancy of intellect and power to analyze, understand, and formulate correct principles of government he has never had a superior. It is said by an eminent writer that he "wrought out for himself a political system far in advance of the conceptions of his contemporaries and one which, in the hands of those who most opposed him in life, became, when he was laid in a premature grave, the basis on which this government was consolidated, on which, to the present day, it has been administered, and on which alone it can safely rest in that future which seems so to stretch out its unending glories before us."

I must not omit mention of one of America's most illustrious sons, notwithstanding he is the subject of an address by the President of this Association.

The reputation of the great Chief Justice, John Marshall, does not rest alone on his distinguished service as a jurist. He was a celebrated and brilliant statesman before he began the service that placed him among the illustrious jurists of the English race, second to none of them. He was a *Federalist* member of the Constitutional Convention and took an active and conspicuous part in its deliberations and debates. He had already served several terms in the State Legislature and was well equipped for the work of the Convention, where his national career began. He was afterwards an Envoy to France, a member of Congress from Virginia, and Secretary of State, and in all of these positions of great responsibility he gave evidence of the ability that later characterized his service as a jurist.

Soon after Marshall became Chief Justice, there was admitted to the bar of Massachusetts a young man who, by sheer force of ability and character, was destined to become one of the great exponents and defenders of the Constitution, and a combined lawyer, statesman, and orator whose equal the world has rarely if ever seen. Webster possessed a rare combination of remarkable qualities. It has been said that "other men have equaled him in argumentative power; other men have displayed as pure

and lofty sentiment; other men have surpassed him in the domain of oratory, but, in the combination of great powers, he has had no equal among prominent men of America."

Webster attained high professional standing in a short time after his admission. He first located in Portsmouth, New Hampshire, where he was compelled to cope with able and experienced men. Jeremiah Mason, then in the full maturity of his powers and the acknowledged leader of the New Hampshire bar, was his chief competitor. During the nine years that Webster lived in Portsmouth, they were on opposite sides of most all of the important cases, and it was there that Webster laid the foundation for his future greatness. In his autobiography, Mr. Webster paid this tribute to Mr. Mason: "If there be in the country as strong an intellect, if there be a mind of more native resources, if there be a vision that sees quicker, or sees deeper into whatever is intricate, or whatever is profound, I must confess I have not known it." It has been said that Mr. Mason educated Webster as a lawyer by opposing him, and that he cured him of all the "florid foolery of his early rhetorical style." But however this may be, certain it is that Webster became a great lawyer and a master of English style.

I shall not dwell upon his achievements at the bar, however. My intention is to briefly mention his great service to the country as an expounder of the Constitution. I shall not follow his course as a member of the lower house of Congress, but it must not be overlooked that, while serving there, his great ability and staunch patriotism influenced the legislation of both houses. But as I view it, Webster's greatest services in this respect were rendered in his speech on Foot's Resolution in reply to Hayne and his speech in reply to Calhoun's speech on the "Bill Further to Provide for the Collection of Duties on Imports". Both of these speeches were masterpieces of sound logic and of unrivaled eloquence, and the former, at least, exercised an influence that is potent today. Hayne was himself a brilliant orator and a champion of Calhoun's doctrine that the Constitution was a compact or confederation between sovereign states and not the basis of a national government with rights and powers of sovereignty. In his speech on Foot's Resolution, Hayne had gone beyond the

limits of the resolution and indulged in sectional and personal attacks in keeping with his views as to the powers and rights of the States. Webster replied to Hayne's speech without special preparation and extemporaneously, and that he answered Hayne has never been seriously questioned. The fathers of the Constitution spoke through the orator, and it was a great masterly plea for a complete union and the national government.

It inspired intense patriotism in young and old and placed Webster and Marshall side by side as preservers of the Constitution. They were to the Constitution, in their time, what Hamilton was in the age that witnessed its formation and establishment. The conclusion of that great speech has been so often repeated by the youth and age of this country on oratorical and patriotic occasions that it is familiar to all, and it is not too much to say that it largely inspired the patriotism that made possible the United States.

Fifty years ago an angular frontier lawyer from Illinois went to the White House, bearing on his stooping shoulders a greater burden than even Washington carried. Indeed, he bore a greater burden than has ever been carried by another single human being; but he bore that burden with a spirit of solemn consecration to the great duties before him, and with trust and confidence in God and in the final triumph of the right. How well he performed those duties is evidenced by the reverent love in which his memory is held, not only in every part of a reunited and indivisible Union, but throughout the civilized world.

Great as other men in public life have been, Abraham Lincoln is the greatest character in the history of the United States, and, I think, in the history of the world. Certainly no man was ever more intensely patriotic than Abraham Lincoln, and no man ever gave more to his country. He gave the product of years of the best part of his life, and finally his life. What more can a man give to his country! What higher example could be given those who were later to come upon the scene of national life, or what nobler example for all the people of our beloved country!

Lincoln did not go to the White House unprepared to meet the great duties and responsibilities placed upon him by his fellow countrymen. For years before his election, he had given deep

thought to the one great problem then confronting us as a nation, and while he did not know when or by what means the problem would finally be settled, he had an abiding faith that, with Divine assistance, the Union would be preserved and the Constitution of Hamilton, Marshall, and Webster upheld.

One of Lincoln's characteristics was his ability to meet great occasions. His debates with Stephen A. Douglas in 1858 demonstrated that he was a man of great intellectual power, but his speech at Cooper Institute in New York City early in 1860 convinced the nation that he was a great man. His argument there on the slavery question was a constitutional argument against the claims of the South equally as sound as Webster's reply to Hayne. It was full of the high and earnest character of the man, and foreshadowed what might be expected of him in the future. Of this speech, Joseph H. Choate said: "He spoke upon the theme which he had mastered so thoroughly. He demonstrated by copious historical proofs and masterly logic that the fathers had created the Constitution in order to form a more perfect union, to establish justice, and to secure the blessings of liberty to themselves and their posterity, intending to empower the Federal Government to exclude slavery from the territories." In the kindest spirit, he protested against the avowed threat of the Southern States to destroy the Union if, in order to secure freedom in those vast regions, out of which future states were to be carved, a Republican President were elected. He closed with an appeal to his audience, spoken with all the fire of his aroused and kindling conscience, with a full outpouring of his love of justice and liberty, to maintain their political purpose on that lofty and unassailable issue of right and wrong which alone could justify it and not to be intimidated from their high resolve and sacred duty by any threats of destruction to the government or of ruin to themselves. He concluded with this telling sentence, which drove the whole argument home to our hearts: "Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty, as we understand it." That night the great hall, and the next day the whole city, rang with delighted applause and congratulations, and he who had come as a stranger departed with the laurels of a great triumph.

Lincoln's first inaugural address made plain to the people his purpose, under God, to maintain an undivided country and from that moment he enjoyed the love and confidence of the great mass of his countrymen and countrywomen. When the American flag was shot from the heights of Fort Sumter, Lincoln was called upon to decide whether the power of a State under the Constitution was greater than the power of the Nation, and history records his answer.

During the dark and troubled times that followed, he displayed that clear and unerring judgment that only great men possess. It is too often the case that our esteem for men is measured by the difficulties they surmount, but that is not true regarding Lincoln. The greatness that is justly attributed to his intellect and judgment is but a small part of his claim to the reverence of his countrymen. While a great intellect commands admiration, it is only the heart that can inspire great and enduring love. Lincoln's heart was as tender and as responsive as the heart of an affectionate child. No unusual or influential appeal was required to call forth his love for his fellow men. It was as quickly responsive to the call of the most humble as to the call of the most powerful. It was always as ready to soften the sorrow of some poor mother, whose boy had given his life for his country, as to gladden the life of one in high station. Who could fail to love and reverence such a character?

The great heart of Abraham Lincoln was opened to the whole world in his brief address at the dedication of the Gettysburg National Cemetery. In an address covering less than two ordinary book pages, he gave to the world, not only a literary classic, but a volume of love and sorrow that will live forever. It is a tribute that only a great heart can utter, and one that made certain the immortality of its author.

THE PRESIDENT: The Local Committee, through Mr. J. A. Devitt, desires to make an announcement.

MR. DEVITT: The Local Committee desires to be advised at as early a time as possible, the number that will attend the banquet tonight, which will be held in the dining room of the Lacey Hotel.

We have arranged an automobile ride at the close of this after-

noon's program. The members will be taken to the Country Club, where a light lunch will be served, and you will be taken back in time for the banquet.

THE PRESIDENT: The next number on the program is "Particularist Society", F. F. Dawley, Cedar Rapids.

MR. DAWLEY: If I should cover this subject the way it ought to be done, it would only take me about two hours and I fear very much if I undertook that at this time of the day I might be disbarred. So I will relieve your fears by saying that in order that I may hold myself down, I have prepared a brief synopsis or skeleton of the subject, which I will read, and for further particulars reference is hereby made to the original source from which I obtained the matter, the same being hereby referred to and made a part hereof as fully as though set forth herein at length.

PARTICULARIST SOCIETY

That form of society in which the family always remain together, ruled by the patriarch of the family, tribe, or clan, in which property is held in common and the individual members must depend upon the community for everything, is called patriarchal or communal society. Particularist society is precisely the opposite of this. In it there is individual independence and self-reliance, the members of the family, as they grow up, go out and make places for themselves, there is individual ownership of property; instead of the individual depending upon the community or the government for his maintenance, the government is the creature of the individual and depends for its powers upon the consent of the governed. The so-called Anglo-Saxon races are particularists, individualists, as contrasted with ancient peoples and the other modern races.

How this particularist form of society originated and developed has been the subject of investigation by some French scholars in social science, one of whom, Henri de Tourville, has elaborated their views in a work entitled, in the English translation, "The Origin and Growth of Modern Nations." A statement of his theory may be of interest to lawyers, because it not only throws new light upon the history of the nations of Western

Europe but also gives new ideas of the origin of certain estates in real property, and of the feudal system, and of certain tendencies of our race which have affected our ideas of government and which may affect some of the great problems now before us.

The author traces the particularist peoples from the ancient Goths who came from Russia or Asia into Germany and Scandinavia before the Christian era. They were wandering shepherds, of the patriarchal type of society. Never remaining long in one place, they held no property in land. Personal property belonged to the family or tribe in common. That portion of the Gothic race which settled in what is now northern Germany and then extended by successive migrations into eastern Scandinavia and thence to the western coast of Norway, underwent a complete transformation from the patriarchal, communal type to the particularist type of society. The transformation was wrought by the physical nature of the countries in which they settled. That part of the race which did not reach Norway did not become particularists, but retained their former characteristics and tendencies.

On reaching Germany and eastern Scandinavia, these bands of Goths could go no farther, but were obliged to become sedentary and depend upon the cultivation of the soil. Their country, northern Germany and southern Sweden, still called Gothland, contained such a network of waterways, lakes, and coast lines that they were also obliged to learn watercraft and become familiar with the use of small boats, which to this day are the principal means of communication between the people of those regions.

Sedentary life and the cultivation of the soil loosened the ties of the patriarchal family. It became more difficult for them to remain together as the land became occupied and a continuous migration then occurred, of the more adventurous and capable members of the family, each seeking a new home for himself. This they were well able to do, as they were perfectly at home on the water and their small boats found a safe way before them along the coasts and in the fiords of Norway. The coast is protected by a chain of islands making a sheltered passage-way between the islands and the main land, and the land is everywhere

indented with narrow gulfs or fiords, deep and still, sheltered from the wind, bounded by precipices and mountains, and extending sometimes more than a hundred miles inland.

Small and isolated patches of tillable soil are found along these fiords in nooks and crevices of the rocks, and the deep waters contain inexhaustible supplies of fish, which supported the emigrant on his journey and supplemented the produce of his little farm. The small estate and its isolation transformed his family from the patriarchal to the particularist type. There was simply not room enough on his estate for the old system. It furnished only work and sustenance for himself. As his sons grew up they were obliged by the necessity of the case to take to the small boat and find other estates for themselves among the nooks of the fiord.

The estates were too small to be subdivided, and so when the owner of one could no longer work he turned it over by agreement to one of his sons who could use it, on condition that the inheritor should support him on the place and should confer certain benefits on the other children in order to equalize things between them. Here was the germ of different estates in the same piece of land and of burdens upon estates. These arrangements differed according to circumstances, and were discussed and agreed upon by the owner and his children as suited them, in entire contrast to the former principle that everything belonged to the family in common.

As these little estates were isolated from each other, the owner had no neighbors and necessarily became independent and self-sufficient. He did not look anywhere for help and there was no one to interfere with him. There was no occasion for any central authority or public life. Each man was too much engaged with his own work to trouble himself about other matters, and each was sovereign on his own estate. This independence, preoccupation with the affairs of the private estate, and aversion to governmental interference have been preserved by the remotest descendants of these people, including the Saxons, the Franks, the English, and ourselves. A people who own the soil do not want to be troubled with the affairs of government, and governments established by them are subordinate to private affairs and merely

supplemental to them. In communal societies it is considered proper for the government to furnish everything and manage everything.

Migration also went on from the Norwegian fiords to the great Saxon plain (northwestern Germany), and here the Roman lawyer and writer, Tacitus, found these people eighteen centuries ago and wrote his famous description of them, giving them the preëminence over all the other German tribes. They had maintained the same characteristics and institutions which they had acquired in Norway. Tacitus says:—

“They live isolated and scattered, as spring or field or wood takes their fancy. . . . They are the finest of all the German tribes and strive more than the rest to found their greatness upon equity. A passionless, firm, and quiet people, they live a solitary life, and do not stir up wars or ruin the country by plunder and theft. They give this excellent proof of their worth and power, that they never heap insults upon their chiefs in order to force them into action. And yet they are always ready to a man to take up arms or even form an army if the case demands it.”

In the Saxon plain they found other people, whom they made serfs. In doing this, however, they followed a plan similar to the one they had adopted with their associated heirs in Norway. This was the origin of serfdom as it came to be known later under the feudal system. The owner gave each serf a separate hut, with a plot of ground, the produce of which was assigned to the serf himself and his family. The serf was not required to render personal services to the master himself, but to the master's estate, by working upon it a certain number of days in the year. One part of the estate served the other part;—dominant and servient estates. The serf was also bound to the soil. So instead of the tie being between man and man as in the patriarchal family, it was between man and the estate. In all the history of this race the landed estate has been the main stay and has influenced the whole social system.

Again, bands of emigrants from the Saxon plain, calling themselves Franks or freemen, under leaders chosen by themselves, invaded northern Gaul, giving their name to the country and

bringing their Saxon customs and institutions with them. Here they came in conflict with the Roman ideas and system of government already established among the Gauls. The Roman idea was that of the absolute authority of the central governing power over everything. The Frankish landholder had ideas just the opposite, derived from his remote ancestors in Norway. He denied the right of the rulers to levy taxes upon his estate, or to administer justice between the people of his estate, or to demand military service. These were his own prerogatives. In the language of Tacitus concerning the Saxons, he stood ready to form an army "if the case demanded it," if he thought it worth while, but he was to be the judge. He was still the sovereign on his estate. He made good his position that his people could not be summoned to war by any other authority than his own. They owed service to his estate only. When this became settled, the small independent land owner, who was not powerful enough to protect himself against exactions from the central authority, hastened to put himself under the protection of the large landholder, which he did by agreeing that his estate should render service to the large estate. Thus he became the vassal of the large landholder and escaped the arbitrary power of the king, and the feudal system became an established fact.

The estate won against everything. Charlemagne was not the owner of vast estates because he was king, but he was king because he and his forefathers had become the owners of vast estates. His rule and his life were those of a country landholder.

The feudal system was brought to its most complete development by the Normans and by them imposed upon England, where the Anglo-Saxons had long maintained their personal independence and the supremacy of the small estate, in accordance with their ancient ideas. How the estate fared in the struggle with the Norman system in England, and finally triumphed over arbitrary power and established individual freedom is a matter of familiar history.

Such is the theory. To here examine the proofs adduced in its support would take too long. It is adopted by Edmond Demolins as the basis of his notable book entitled "Anglo-Saxon Superiority".

If correct, it shows that the founders of this Republic, when they declared that government derives its just powers from the consent of the governed, were declaring exactly the fact so far as our race was concerned, of which an instinctive race consciousness had existed for two thousand years.

It also shows how we have inherited our natural apathy toward the details of public affairs and why we do not turn out to vote at primary elections and special or referendum elections. It suggests that we have an innate aversion to such things and will pay no attention to them except on some special occasion when, as was said of the ancient Saxons, we deem the matter worth while, or when some great danger impends. It may be that primary elections and the referendum are not suited to the genius of our race and that they are so contrary to the habits and ideas of centuries as to fail of success. We have had our governmental and political affairs attended to by delegates for so long that it will be difficult to get out of the habit.

These same inherited tendencies have caused socialistic theories to make much slower progress in England and America than in other countries. The independence of the individual on his own small estate has been the very source and foundation of the English and American systems of government and society, the only systems that have been superior to the Roman. Socialism is an importation from the communal races and is a direct attack upon this personal independence based on private ownership, and it will not be easy to persuade men to surrender such independence in favor of a reversion to a communal form of society from which they were weaned two thousand years ago and against which they have fought ever since.

So the study of this theory of the origin of our institutions may give us increased confidence in their stability.

THE PRESIDENT: I will appoint at this time the Auditing Committee, to pass upon the Treasurer's report: J. B. Weayer, Jr., of Des Moines, Judge J. J. Clark, of Mason City, and Judge H. M. Remley, of Anamosa.

JAMES O. CROSBY: There is one matter I would like to see fully discussed by the members of this Association. Two years ago I

offered a resolution asking for the repeal of the Collateral Inheritance Tax Law, and it was referred to the Committee on Law Reform. At our last meeting the subject was continued over until the present time. Now this is put at the tail end of the program, and in the nature of things it cannot receive careful attention. I deem this a matter of great importance. I see the Committee on Law Reform concludes with the statement: "A further report with reference to a resolution favoring the repeal of the Collateral Inheritance Tax Law and to some other matters will be made during the session." It seems to me this is a matter of sufficient importance so that it should receive serious consideration by the members of the Association.

THE PRESIDENT: The members will notice that we are well up with the program, and I think we will have ample time tomorrow to cover the subject in a satisfactory way.

The Association will stand adjourned until 2 o'clock P. M.

THURSDAY AFTERNOON SESSION

2 O'CLOCK P. M.

THE PRESIDENT: The Association will be in order. Will the Vice President, C. G. Saunders, assume the Chair?

VICE PRESIDENT SAUNDERS: The first number on the program this afternoon is the President's address, "John Marshall," by Senator J. L. Carney of Marshalltown.

JOHN MARSHALL

The selection of a subject for an occasion like this, when representative members of the Bench and Bar of the State are present, is a duty requiring grave consideration. Believing that at our annual meeting it is well at times to review the history of some of the distinguished lawyers of the past and that the annals of the Iowa State Bar Association should bear testimony to the respect and reverence we feel for the subject of this paper (although such sentiments may be conveyed by one quite inadequate to the task), I have determined to invite your attention to the

life and labors of John Marshall, as a fitting subject for this address. It is hardly necessary for me to observe that no stilted eulogy or fulsome praise are needed, and indeed such treatment of such a subject would be entirely misplaced.

John Marshall's name and fame rest secure upon great labors conscientiously performed for humanity and the then young Republic, whose future lay as it were, while he was Chief Justice of the Supreme Court, in the hollow of his hand. No great man, whether a ruler or a lawgiver, has in the history of the world been given a greater tribute than was given the subject of this address, on the one hundredth anniversary of his taking the oath of office when thirty-seven States and Territories of the Union, by united and concerted action at appropriate places within their borders, in meetings of the Bar and Judiciary, gave voice to the tributes of praise for the conscientious and imperishable services John Marshall had performed as Chief Justice of the Supreme Court. In this labor of love Iowa and this State Bar Association, through its officers and appointed speakers, bore its fair share, and now, after ten years have elapsed, it is fitting to recall some of the most impressive lessons to be learned of a life that called forth such a magnificent memorial from a free people.

George Washington, John Marshall, and Abraham Lincoln are, in my judgment, the three great names in American history, and while it is impossible to justly compare the value of their services to the Republic, it may at least be said without fear of successful contradiction that while Washington, the soldier, established the independence of the United States, without the thirty-four years of invaluable service the lawyer and Judge rendered to his country, there would not have been a united country for the South to have sought to sever, or for Lincoln, the Statesman, to have saved. It was the bond of the Union, the Constitution, which needed strengthening when Marshall came upon the scene of action, and in the providence of God this broad minded, sane, and incorruptible patriot appeared to accomplish the needed work. He was not born to the purple or in one of the high places of the earth. Springing as he did from an ancestry faithful to the new aspirations for freedom and independence, his father being an officer in the French and Revolutionary wars,

born as he was in 1755, he early imbibed the martial spirit and at the age of eighteen left the study of the law to become a soldier of the Revolution.

John Marshall had comparatively little of the knowledge imparted by the schools. His father gave him his earliest instruction which aided by two years with a tutor and one year in an academy of the neighborhood, with no college training whatever, comprised all the educational advantages which this teacher of teachers, this leader of the bar, this Chief Judge of Judges ever had. Accustomed as we are to believe (and rightly so) that the learning of the schools is a bulwark of power, we are led to reflect upon the strength of character, the almost unaided power of intellect, which made this man during his day and generation the unerring arbitrator of the greatest questions affecting the well being of millions yet unborn, the judge whose judgments gather strength with the revolving years.

Reflect, if you please, upon the condition of our government in that childhood of the Republic when John Marshall accepted from the hands of President Adams, in the early days of 1801, the position of Chief Justice of the Supreme Court. We are accustomed, in imagination, to surround that Court and its chief presiding Judge with a sort of halo, the direct result of the veneration we feel for the great position that Court has held for one hundred and twenty-two years in connection with the destinies of our country. At the time of John Marshall's appointment, the Court was but eleven years old, having been established in 1789. It had had but two Chief Justices. John Jay for six years and Oliver Ellsworth for three years, both of whom had resigned. One appointed, John Rutledge, had failed of confirmation and thus in the infancy of the Union with its rules of practice hardly established, with no decision of the Court that would assume the dignity of a landmark, John Marshall took his seat at the age of forty-six years, hoping, as he stated in a letter to President Adams, to never give him occasion to regret making the appointment. The Court had previously held its sessions in the city of New York, but when Marshall took his seat as Chief Justice it began its sessions at Washington, the capital of our country.

President Adams has justly been eulogized for the choice that he made of a Chief Justice. If he had rendered no other service to his country this one service would give him undying fame. It would be deeply interesting to know what influences were brought to bear upon the President's mind to induce him to select at that time for that particular place, the one man who, by the united voice of those persons whose judgments have any weight, since the memory of the heated discussions over some of the decisions made have passed away, was best fitted for the exalted position. We say "exalted" position now, but at that time it was not so regarded. The name of Marshall was not then known as that of a great lawyer. He had had, as we know, but limited educational advantages. He had acted well his part in the army in a place of limited authority. He had spent some years at the bar, entering the practice at twenty-seven years of age, and had attained in a few years prominence in the profession in a State where great lawyers and great men had their homes, in the State of Virginia. Together with his entry into professional life or soon thereafter, he entered the legislative service of his State, and so with these two avenues to public notice he broadened his mental grasp upon the great issues of the day while his mind was becoming fitted by reflection and study to lay deep and strong in the position he was soon to occupy, the foundations for popular government.

The preparation of John Marshall for his life work had been of the broadest character. He had been, as has been said, a soldier, a member of the Legislature, and finally appointed on a mission to France. He had on his return yielded to the solicitation of Washington and became a Member of Congress. He retired from Congress to accept the office of Secretary of War, and for a few months held the office of Secretary of State. He had filled each and every station to which he had been called, without any solicitation on his part or thought of personal advancement, with that fullness of success which marks preëminent ability and gave to him that wonderful preparation of mind and knowledge for the discharge of the duties of presiding Judge of the Supreme Court during the most critical period of our history.

For nineteen years did this work of preliminary training con-

tinue, until the fateful moment when he should be called to his life work. It is impossible now to conjecture what would have been the fate of these United States had President Adams' choice been other than it was. He could have found no one who, as subsequent events transpired, was more fitted for the task. Suppose for the moment he had chosen a weak or vacillating Chief Justice at that formative period; we may as well reflect upon possible results had President Buchanan's election been deferred four years later than it was, and had he taken the Presidency in the beginning of the Civil War instead of Abraham Lincoln. The wisdom of man is not adequate to predict the result, but it might well have been the end of the Union.

When we witness in our history, these repeated instances of the man fitted for the deed, being ready for the mighty task as was Washington in his day, as was Marshall when needed, as was Lincoln when he was called for the trying duties of the hour, we must believe that "There's a Divinity that shapes our ends, rough hew them how we will". No wonder that with the approval and heartfelt consent of patriots everywhere, ten years ago, the one hundredth anniversary of the accession of that beloved man to his high office should have been celebrated all over this broad country with reviews of his life work by orators of the Bar and Bench, and that in preceding years his name should have been perpetuated in being given to so many cities and other localities in the Union.

The work upon which John Marshall entered, in his accession to the Chief Justiceship, was new and untried. He had not had the advantage of experience in a *nisi prius* Court in hearing testimony or arguments and which is, in some respects, an admirable course of training for higher judicial responsibility. He had substantially no precedents or landmarks to guide him in interpretation of the Constitution in regard to which his opinions have challenged the admiration of the world. While there had been only two decisions rendered before he took office upon constitutional questions by the Supreme Court, there were rendered while he was Chief Justice fifty-one decisions, involving constitutional questions and some of the gravest importance.

But while the cases that involved these questions, and espe-

cially those in which Judge Marshall delivered the opinion of the Court, have been the chief foundation of his greatness, there was decided by the Court during Judge Marshall's occupancy of office, one thousand one hundred and six cases in which he personally prepared five hundred and nineteen of the opinions besides eight dissenting opinions to the majority opinions of the Court, and this fact alone shows that being only one of seven Judges as the Court was then constituted, either by the deference of other members of the Court or by their acquiescence, the duty devolved upon him of formulating the opinions and giving expression to views of the Court in almost one-half of the cases decided during his term of office. It is further to be noticed that in thirty-five cases on constitutional questions above referred to, John Marshall prepared the opinion of the Court and one of the dissenting opinions that was rendered by him was in the great case of *Ogden vs. Saunders*, and incidentally it may be mentioned that succeeding years have with constitutional lawyers generally strengthened the belief that he was right and the majority of the Court was wrong.

The Constitution of our country was, when Marshall took office, a mere chart, with, at that time, but few judicial interpretations of its meaning, and those not of great importance. The advancing years gave rise and still give rise to the necessity of examinations of its various provisions which although apparently set forth in language easily understood, by the advancement made in the industries and population of the country, by the changing condition which new discoveries and new social and political conditions create, become uncertain in meaning and especially so in the time that Marshall held office. While some of the interpretations engrafted upon the Constitution by judicial construction are of a surprising nature, it is no doubt true that it must have been foreseen that there would be a necessity of interpretation and construction of its various clauses, yet it could not have been foreseen that the great work of laying the foundation for its correct exposition should, by the favor of Divine Providence, have fallen upon the shoulders of one so eminently fitted by his majestic intellect and elevation of character for the task as John Marshall.

An excellent summary of the principles of construction which should be applied to the Constitution has been given by Judge Marshall himself in beginning the dissenting opinion in *Ogden vs. Saunders*, already referred to, and I quote therefrom:

“To say that the intention of the instrument must prevail, that this intention must be collected from its words; that its words are to be understood in that sense in which they are generally used by those for whom the instrument was intended; that its provisions are neither to be restricted into insignificance nor extended to objects not comprehended in them nor contemplated by its framers, is to repeat what has already been said more at large, and is all that is necessary.”

Probably the English language is not capable of expressing in more concise and luminous manner the central thought embodied in the above statement than is there expressed. It is this wonderful gift of expression of thought, clear cut as a diamond, with no unnecessary qualifying words or phrases, that gives the opinions of Judge Marshall much of their force. The language used in most of the opinions prepared by him is without technical reference and so clear in expression that the facts and principles set forth are very easily comprehended either by lawyer or layman.

The opinions of Judge Marshall have none of those embellishments of humor that at times find their way into the published opinions of later day occupants of the Bench. His disposition, while genial and frank, was without any tendency toward levity, and this was especially true while engaged in the arduous duties of his office. One is impressed in review of his life that he had no temptation to be witty or sarcastic while engaged in Court work or preparation of opinions, and that his sole aim was to attempt to master the case in hand and apply to it those principles of fundamental law, which none knew better than himself, or could express in more fitting language. Extremely kind and courteous in personal demeanor, he seemed to be at all times impressed with the responsibility of his position and calmly, with conscious rectitude of purpose, discharged his duties with an eye single to the merits of the controversy which he was to decide.

United with other great qualities of mind and heart, Marshall was an indefatigable worker. It has been noted that his decisions are not so replete with reference to authorities as those of many

great Judges, even in the earlier days of recorded decisions, but it is impossible to believe but that the opinions he wrote, especially upon the graver questions submitted to him, were the result of laborious examination and study. He had the aid, it is true, of lawyers whose names will forever remain as leaders at the bar, in discussion of great questions tried in the Court of which he was the presiding genius, and he loved to hear argument upon such questions. Always patient and kind, he showed the greatness of his character in not pretending to know all the law, or all that might be said upon a given subject and invited and welcomed that full and free discussion which candidly given can be of greatest aid to the painstaking judge.

With such advocates as Webster, Wirt, Binney, Dexter, and other giants of the bar to aid him, much of the learning since embodied in our text books and decisions could be spared, when a mind so luminous and penetrating as that of the great Chief Justice was the crucible to separate the dross from the gold.

Firmness, unlike obstinacy, is a mark of the first class judicial mind and nature, and this quality Judge Marshall possessed in fullest degree, and with unmatched patience he heard the controversy to the end. Not hurried or nervous over time properly occupied in the trial of the cause, the one consideration with him was to have a full and fair and free presentation of the facts and arguments of counsel, and if anyone ever attained that ideal equipoise of judgment which prevents an irrevocable conclusion until the end, he was master of it; but when that time came, when the cause was ended and submitted, and the clarifying processes and workings of his intellect had revealed to him the truth, John Marshall declared it, and litigants and lawyers knew that the final word had been spoken and from it there was no appeal. In reasoning power he was unapproachable. In clearness of mental vision, in stability of foundation principles, and acuteness of analysis, he was easily first. Regarding the principles of our government with tender love and affection, his ardent desire was to so fashion it that it would stand for all time, a free government for free men.

Impressed, as he and other leaders had been, by the weakness of the Confederation of the States, he was firmly convinced that

an entire change as to federal power must be invoked, or chaos would result. He recognized in the Constitution that, while it provided for a government of limited powers, it was intended that the powers which were granted should be unlimited and that the federal authority within those powers should be supreme. It has been said by a great lawyer that reason is the great authority upon constitutional questions and the faculty of reasoning is the only instrument by which it can be exercised, and it became his duty to construe the Constitution, to remake it, as it were. His great reasoning powers were devoted to the task of constructing a framework for future ages and for the government of millions yet unborn.

It will be remembered that he was a member of the Convention of Virginia which was formed to consider the Constitution just put forth, for the purpose of being submitted to the States, and on being urged by many voters in his own county, while a candidate for election to the Convention, to vote against it, he said, "The questions which have been perpetually recurring in the State Legislature and which brought annually in doubt principles which I thought most sacred, which proved that everything was afloat, and that we had no safe anchorage ground, gave a high value in my estimation to that article in the Constitution which imposes restriction on the States. I was consequently a determined advocate of its adoption." Here we find a clear ray of light reflected, as early as in the thirtieth year of Marshall's life, upon the formative processes of his mind, as afterward set forth in his many adjudications upon that great instrument.

John F. Dillon, whom Iowa delights to honor, has given, in language and in thought unsurpassed, an estimate of the United States Supreme Court while Judge Marshall was its presiding Judge, and particularly of the effect his judgment had upon the Constitution, in the following language which I quote:

"If the Supreme Court, during the period of active political development covered by the long official career of Chief Justice John Marshall, had put a narrow and inelastic construction upon the Federal Constitution, so that it could not have expanded with the growth and answered the necessities of a great people, it would have been calamitous to an extent no words can portray, and no imagination conceive. His views left it possible for the national growth to take place in accordance with the natural process of

evolution. Marshall's judgments upon the National Constitution are among the most original and massive works of the human reason. They are almost as important as the text of the Constitution which they expound. Some of them were indeed criticized at the time, but they have immovably established themselves as right in the general judgment of lawyers, public men and the people. Although changes in political parties have been reflected in the *personnel* of the Bench; although unforeseen crises in the national life have been reached and passed, it is remarkable that on not one of his many judgments has been written the word, "overruled" and equally remarkable that no political party proclaims or holds tenets or doctrines inconsistent with the principles on which those judgments rest. They have become primal lights, shining with the steadfast fidelity of the north star, or the southern cross, for the guidance of the inquirer after constitutional law."

Thus this great master of the art of expression, this profound Judge and lawyer, contributes in glowing language his meed of praise to the wisdom and learning of the subject of this address, and it is noteworthy that among all the great lawyers and Judges of our past history, including those of the present day, there is not, on this subject, a discordant note.

But it is to a companion upon the Bench for twenty-four years that we owe the most heartfelt and glowing tribute to John Marshall's acumen and, to use his own language, "almost super-human abilities". Mr. Justice Story gave, soon after Marshall's death, an address upon the life and labors of his deceased friend who had been his associate and colleague on the Bench for nearly a quarter of a century, and his estimate of the character and wonderful ability of the Chief Justice remains unsurpassed to this day. With remarkable power of language Justice Story sets forth the necessary qualifications of mind for one who shall fittingly occupy a place upon the Supreme Bench; the new and heretofore untrodden fields of research and thought, the diverse and oft times conflicting laws of the different States, the new doctrines that must be studied, the necessity of at times forgetting in one cause what has been learned in another from its inapplicability or local unfitness; that he who would properly discharge such duties must have knowledge not only of the relation of the States with the general government but of the treaties with, and relations of, the National government to foreign powers; and after at length setting forth the requirements of the position, he gave Judge Marshall the full meed of praise when

he applied to him the title, "The Expounder of the Constitution of the United States". This address by Judge Story, given by one of the intimate companions and friends of the deceased Chief Justice, is a monument to his memory and fame.

An address upon John Marshall would not fittingly close without a reference, brief though it may be, to some of the cases in which he pronounced the judgment of the Court on constitutional questions. John Marshall became Chief Justice in 1801, and in December of the same year there was begun a case involving the right of that Court to pass upon the constitutionality of an Act of Congress, in the case of *Marbury vs. Madison*. On proper application by affidavits a rule was granted by the Supreme Court in favor of the plaintiff Marbury to require Secretary of State Madison to show cause why a writ of mandamus should not issue requiring him to issue a commission to Marbury as Justice of the Peace, for the county of Washington in the District of Columbia, to which office he had been appointed by President Adams. No session of the Supreme Court was held in 1802 and in February, 1803, the application for a writ of mandamus came before the Court (no cause why it should not issue having been shown), and after argument and due deliberation, the judgment of the Court was delivered by the Chief Justice. It was held, First: That Marbury had a right to the commission as Justice of the Peace. Second: That he had a right which had been violated and under the law had a remedy. Third: It was decided that the Supreme Court having only appellate jurisdiction (except on certain specified conditions which did not apply), that it had no original power to issue the writ of mandamus. That the Act of Congress authorizing such writ as an original exercise of power was unconstitutional, and therefore the writ was denied.

This decision and opinion of the Chief Justice has by the weight of opinion of lawyers, generally, been held the strongest and most important of any of the constitutional decisions of Judge Marshall. Without taking time now to further dwell upon it, its authority has never been doubted, and the Constitution attained the supreme place in the laws of our country that it had never held before, and from which no assaults have removed it.

As to which one of four or five of Marshall's opinions are the greatest, much diversity of judgment exists among those lawyers best fitted to decide. The view point as to this question is, as in regard to other questions, most important. The possible, if not probable, effect upon the institutions of our country, if the decision had been the reverse of what it was, is always of prime importance, and with this contingency in mind it is probable that the case of *McCulloch vs. the State of Maryland* stands in front rank of those cases which are really the bulwark of the Republic. The case involved the right of the State to tax a branch of the Bank of the United States, by requiring it to use in its issue of notes stamped paper of the State. It was not sought in the act of legislature to tax the property of the Bank directly, but in the requirement, that it should use only stamped paper furnished by the State, this result was indirectly reached.

The first and leading question was, as to the power of the Federal Government to establish and incorporate a Bank of the United States, and this power Judge Marshall, by a most luminous train of reasoning, clear and pellucid as a mountain stream, found to exist, and that it was a necessary adjunct to the life of the Nation.

Having found the power to create included in the Constitution, on the second proposition or question, as to the right of the State to tax the Bank's operations or franchises, the judgment of the Court was that such right did not exist, for it was said in language easily understood by lawyers and laymen, the power to tax included the power to destroy, and the power to destroy might render useless the power to create. It has been declared by Chancellor Kent and Professor James B. Thayer that in no other case has the supremacy of the National Constitution been declared in so clear and convincing a manner as in *McCulloch vs. the State of Maryland*.

The most widely known, to the people generally, of all of John Marshall's decisions is that of the Trustees of Dartmouth College *vs. Woodward*. The fact that the fortunes of, at that time, a comparatively small college were the foundation for one of the most famous decisions in American jurisprudence, has invested the case and its result with an almost romantic interest, and

interwoven with the history of the case is the fact that in presenting it before the Supreme Court Daniel Webster, the greatest constitutional lawyer of the times, made one of his most impressive and powerful arguments. The incidents attending Mr. Webster's argument, the reference to the college as being his own *alma mater*, and the visible effect upon the Chief Justice and his associates of the argument and its eloquent peroration are familiar to us all. It is one of the glories of our profession that such a cause could have such an advocate as Daniel Webster and such a Judge to render the decision as John Marshall.

The pivotal facts upon which the case turned are briefly these: A charter had been granted by the Crown of Great Britain to the Trustees of Dartmouth College in 1769. After the Revolution the Legislature sought to alter the charter by increasing the number of trustees, that the trustees should be appointed by the Governor of the State, and these and some other attempted changes and amendments to the charter the former trustees, appointed under the first charter, declined to accept. Woodward, the defendant, had been Secretary and Treasurer of the college, but had been removed. After the attempted changes in the charter he was appointed to fill the same offices under the newly appointed Board of Trustees. An action of trover was brought for the corporate seal, the charter, and records of the college by the former Board of Trustees, and the plaintiffs were defeated and appealed to the Supreme Court of the United States.

The vital questions in the case were, whether or not the charter which had been granted by Great Britain when the College was founded was a contract, and if so, whether the act of the Legislature of New Hampshire seeking to amend and change it was void under the clause of the Constitution prohibiting the impairment of contracts. The opinion of the Court held the affirmative on each of these propositions, and established the sacredness of contracts under the supreme law of the land. It is impossible to over estimate the importance of the decision as to the particular matter with which it deals, and the principle of law thus established has never since that time been doubted.

One of the noticeable features of these decisions is that in two of them no authority was cited, whatever. In the *Marbury* case,

two citations were given by the Chief Justice. Otherwise the decisions were the result of that reasoning power which proceeded straight and unerring as a ray of sunlight on its mission.

I cannot and will not detain you longer with reference to these landmarks of our country's liberty and greatness. At the right time in our history and by the right man were these and other principles of free government established and the peace, tranquillity, and happiness of these States established.

In the old world a conquering general was frequently loaded with the gifts of a grateful people. John Marshall has given to this nation more in substance, in stability, and power than could be gained by territorial aggression, which is often the result of bloodshed and war. He died at the age of eighty years, the same quiet, unassuming man he had been through life.

No writer has given a stronger and more truthful estimate of his work than James Bryce, in his work, "The American Commonwealth", when he says:

"His work of building up and working out the Constitution was accomplished, not so much by the decisions he gave as by the judgments in which he expounded the principles of these decisions, judgments which for their philosophical breadth, the luminous exactness of their reasoning, and the fine political sense which pervades them, have never been surpassed and rarely equalled by the most famous jurists of modern Europe or of ancient Rome. He grasped with extraordinary force and clearness the cardinal idea that the creation of a national government implies the grant of all such subsidiary powers as are requisite to the effectuation of its main powers and purposes, but he developed and applied this idea with so much prudence and sobriety, never treading on purely political ground, never indulging the temptation to theorize, but content to follow out as a lawyer the consequences of legal principles, that the Constitution seemed not so much to rise under his hands to its full stature, as to be gradually unveiled by him till it stood revealed in the harmonious perfection of the form which its framers had designed. That admirable flexibility and capacity for growth which characterize it beyond all other rigid or supreme constitutions, is largely due to him, yet not more to his courage than to his caution."

The problems of government of the United States which demand solution keep pace with its material progress and development. Its increase of population, of wealth, of power and influence among the nations of the earth, has never been equaled since governments were organized. The recent past has given occasion for momentous decisions of the Supreme Court to be

pronounced. We occasionally see statements in the public press to the effect that certain cases are pending in that Court involving consequences as grave as any decision of that Court in its past history. Such statements are, for the most part, gross exaggeration and yet, while it is undoubtedly true that decisions of that Court, some of which have been referred to in this address, did give the Union strength and stability that it could not have gained from any other source, this is also true that in the developing history of the Republic problems will be solved by that Court as important to its future stability and progress as any that have been decided in the past.

If the time shall ever come that the safety and integrity of this Union of States shall depend upon the decision of a question thus vital in its nature, no greater gift could be vouchsafed by Divine Providence than that it shall be pronounced by a Chief Justice with such singleness of purpose, such purity of intention, and such unsurpassed wisdom as John Marshall.

THE PRESIDENT: The next paper upon the program is one entitled "The Law," to be given by Hon. W. R. Lewis, of Montezuma.

JUDGE W. R. LEWIS: Some years ago Justice Deemer called attention to the value of uniformity in the law and its application, and to the importance of a system of laws built upon foundation principles rather than a series of reports of individual causes, decided on the basis of exact justice in every particular case, and thereby suggested the effort involved in this paper.

THE LAW

We talk of laws made by man, but this is a mere convenience to enable us the more readily to communicate with and understand one another. All law is from God. It is eternal and immutable. With every thing, animate or inanimate, that was made, there was created integral with it, as an essential part and quality of it, its law. This cannot be changed. If it could be, the creature itself would be changed or destroyed, man himself with all the complications of body, mind, and soul, not excepted. True, in his case, being endowed with intelligence, he has the

power to ignore the law of his being and treat it as if it was not. When he has done this, however, he has not changed the law, but simply brought upon himself the penalties for its infraction. When God said to Adam, "for in the day that thou eatest thereof thou shalt surely die", He did no more than to warn him of the law that was in him. From that day to this God has striven with man to prevail upon him, if possible, to recognize the law and its immutability. This has been the purpose of the institution of governments amongst men; of the institution of legislatures and courts and of this Association; and it is the purpose, a little mite, of this paper. As soon as we recognize the fact that all the laws necessary to assure the substantial happiness of the race are ready made to our hands and that all that we have power to do is to discover and write them in our own appropriate language, reading alike to all men, we shall have accomplished one of the necessary features of our task. We should, probably, not differ as to the truth of the proposition, that man was not created with the heart of the murderer, adulterer, thief, or perjurer. Nor would we disagree on the proposition that no man guilty of any one of these crimes could be happy. Neither would any of us propose a law declaring any of these crimes righteous. Substantial happiness would be absolutely impossible in any community that encouraged the commission of any one of them.

Then again when we have gone outside the realm of morals we find the same inexorable laws. We can no more fix the price of a perch of stone, by legislation, than we can fix the weight of it by legislation. We went over this ground, in the fight over the questions in "Sixteen to One", and settled the whole matter so thoroughly, in favor of the proposition that all the laws involved were God given and beyond the power of man, that we have almost forgotten what the expression meant. But we need not further extend the discussion on this point, as I am sure a little sober reflection will find us in accord on the proposition that every created thing has its law, and throughout all the field of human life not one can be found which is subject to change by man. I have heard it suggested that the Supreme Court ought to be excepted from this statement, but I verily believe, that generally, it regards itself as subject to the law, as well as other folks.

It may be suggested that this created and God given law is difficult to read, or discover, but can this fact, and I concede it, be considered as proof that the law does not exist? I do not think so. The first violator of the law forbidding murder, when charged with the crime, showed beyond any possibility of doubt that he knew he had violated the law, and this was two thousand or more years before murder was denounced by the written law. All he knew about it was what he had been created with—the law that he found within himself. Since that time God has revealed much to man. He has all the time been endowed with a spirit and intelligence and power to reason fully enabling him to know his own character. It has been demonstrated by the work of the courts that man is able to know what is in him. The law as implanted in him at the creation has been again and again so admirably rewritten by the courts in our own language that it is no longer a question as to his ability. By a faithful recognition of the principles of right implanted in the human breast a transcription of the original creation may be made and A BOOK OF THE LAW may be written which shall be for the blessing of the nations of the earth and a uniform, safe guide through all the problems involved in human life.

So far as this work has been accomplished, it has been achieved through many failures. Sometimes the cause which reached the court of last resort has involved a righteous party and on the other side an unrighteous one, and by the application of the created and correct rule the unrighteous one was about to prevail; or one of the parties was a widow's son who was the sole comfort and support of his mother, and the other party a powerful railway company, which was about to prevail over the boy; or a poor, honest laborer, with a large family wholly dependent upon the father's wages, who had been overtaken with some misfortune in life, was about to be defeated in his cause with a great iron manufacturing company, or in some other case where the party whose weakness excited sympathy was about to be overcome by his powerful adversary and suffer a hardship by the application of the true rule, the effort to save the one whose case excited our sympathy has led us to write a distinction in his favor which was not supported by reason, and the system has thus been distorted

until it was of no value whatever in the great volume of business which came under the rule involved in these cases. Sometimes it may have transpired that the appellate court did not agree with the verdict of the jury. There was abundant evidence to support the verdict if it was to be believed, and a reversal could not be put on the ground that there was not sufficient evidence. As viewed by the court the verdict was an outrage not to be tolerated by any court, and in the effort to avoid doing this distasteful thing a distinction was discovered which again made the case a confusion and a snare in all future business coming under the rule involved.

The decisions in these cases, hurtful as the result of them was, must not be regarded as indicating lack of integrity in the courts by which they were rendered. It may be conceded that the judgments of the trial courts, every one of them, was unjust and that they ought to have been reversed. The fault, however, was in the minds through which these judgments came and not in the law. The finiteness of the human mind, even the most trained and cultured, has always to be reckoned upon. At one time the Supreme Court of the United States expressly held that the Sherman Act meant precisely what was written, that combinations in restraint of trade were forbidden, whether reasonable or unreasonable. Fifteen years afterwards, the same Court concluded, as I understand the decision, that only the unreasonable combinations or the combinations in unreasonable restraint of trade, were forbidden. There can be no question as to the integrity of this Court in either case. Perhaps both these decisions cannot be right, so that we have in them simply an illustration of the frailties of humanity, even in high places.

But we are writing The Book of the Law which is to guide all the people in all their transactions, perhaps for generations to come, and cannot spoil The Book for the purpose of correcting an injustice, however grievous it may be, in any particular case or in any number of individual cases. At the very worst the percentage of such results is, and will be, very small. Every case decided by the appellate court constitutes a paragraph in this Great Book, everybody's chart for all they do in life, and if any one of them is erroneous it destroys the value of the chart.

It leads to differences among the people who look to it for guidance. It breeds litigation. The error, the longer it remains, becomes more difficult of correction. It seems to me clear that we cannot afford to correct injustice in individual cases at so great a cost. That it is much better that the few suffer rather than the many. Let us then have a carefully built up system of the law from which all may know at the time of the transaction, just what the law is which shall govern it. If we could have such a system, thoroughly correct, and no errors in the processes of the mind, both parties would know beforehand what the judgment in any given case would be.

If we undertake to satisfy conscience in every individual case and to avoid occasional hardships resulting from the rigors of the law, we are very soon without any guide for the transaction of business. Even the lawyers cannot tell what the law governing any particular transaction is until they try a case about it and have the judgment of the court, and then all they can possibly know is the law as applied to that particular case. There would be no certainty that the judgment in the next similar case would be the same. This method might, now and then, save some poor man his home, but it is by no means certain that it would not turn twenty others out of doors with no place to lay their heads.

Let us build a system of the law, the best we can write, reading as nearly alike to all men as possible, which shall be a guide in every transaction in human life, so clear, so sane, so just that litigation will not be necessary to settle differences between the people.

THE PRESIDENT: The next speaker on our program is Prof. Ralph Otto, Professor of Law in the State University at Iowa City. His subject is "A Practical Legal Education".

A PRACTICAL LEGAL EDUCATION

It is desirable to state with some emphasis at the outset of these remarks that they are offered in a purely private capacity. The fact that the reader holds an official post with the great legal professional school of this State to which the interests of the

legal profession at large are confided, ought to afford a guarantee that he speaks with some knowledge of the facts and under some sense of responsibility. The suggestions which follow are practical rather than academic or theoretical.

Conditions are altogether different at the present from those of forty or fifty years ago, when many of the older men here today, now peacefully counting the scars of their battles, were admitted into the practice. Then there was no rule of preparation for the study of law. There was no instruction save that obtained in the law office. Many totally unfit registered their names as clerks and then picked up in a way, both lazy and unsystematic, enough of Blackstone and of Kent and of the practice, through the copying of papers, to pass the very easy as well as timid examination of a sudden committee drafted from a reluctant bar. The saving element and the only good one in the old system was that the clerk became more or less the assistant of the practicing lawyer, and that through the copying of papers, precedents of pleading and practice, forms of conveyancing, briefs, etc., disputed questions of law passed under the young lawyer's eye, slowly enough to be studied with the patient progress of his pen. He absorbed what law he knew, rather than studied it, but nevertheless under such a crude and lax method, very able and distinguished lawyers grew up whose names and reputations have survived.

At the present time it is considered no part of the duties of busy practitioners to instruct men who naturally wish to learn a little of everything and usually leave the office about the time they become useful. The student, quick to notice that information is withheld or grudgingly given, too often settles down to some routine task and finishes his term of apprenticeship very little wiser than when he commenced it, so far as the knowledge of higher class office work is concerned. If the seeker after practice in methods gets into an office where little business is done his experience must necessarily be proportionate, and when, as not infrequently happens, it is a loose and disorderly office where an antiquated system prevails, he learns much that he will be wise to forget as quickly as possible. There are, however, some offices where men get such a training as fits them for their future, but

these are the exception rather than the rule, and I venture the assertion that not even in the best offices does the practical training equal in excellence the theoretical or academic training which a man receives in college. I maintain that law teaching universities should extend their boundaries and instruct in methods and technique, as well as theory.

The one good and useful element in the old system of practical legal education has now almost wholly disappeared. In general, under existing conditions, the student in a law office copies nothing and sees nothing. The stenographer and the typewriter have monopolized what was his work. The flying symbols and the click of the keys have distanced the slow travel of his pen, and he sits outside of the business-tide ebbing and flowing around him like some solitary on the sands, tired of the book that has grown dull. As a rule, difficulties breed remedies, and students' needs have evolved practical training in law schools.

To men who begin active practice of their profession, after leaving the law school a legal education in its broadest sense includes not only a full knowledge of the principles, but also of methods, and the true function of a university is to teach both. If men in the law school intend to practice law they should be thoroughly equipped for their profession. Their training should be practical as well as theoretical. It should have constantly in view the office and the court-room as well as the study and the library.

I am glad to know that this Association has not neglected its duty, for it has, through its Committee on Legal Education, done much for the advancement of the law schools. The time has come, I believe, for the court of last resort, to which has been intrusted the formulation of rules for admission to the bar, to amend those rules by requiring a complete high school course of four years or its equivalent as the minimum of preliminary preparation for the study of law, and a course of three years in a law school or four years in an office, as the condition of an examination for the bar. I believe that I hazard nothing in expressing the assurance that there are no members of the profession more anxious than our judges of the Supreme Court to see the standards of legal education elevated and the material of

the bar strengthened and improved. Almost the majority of law schools have adopted the complete high school standard and the three year law course and some have even gone further, by confining admission only to college graduates.

The old theory was that the law school was a sort of a device to provide a systematic learning of substantive law. The student was supposed to learn procedure in an office. The law school was considered as merely supplementary or preliminary to the education in an office, but since that theory has been abandoned it has been seen that pleading and evidence are the procreative parts of law. If we wish to see the living law, and by that I mean law in motion, we must see it as procedure develops it. Therefore, if we wish to teach law in its true character as a force we must show it as it acts. If we wish to teach or investigate any principle accurately, it is indispensable to take notice of how it works or is worked in its actual application. The principle of the law is the evidence and the measure of its usefulness to the community. My impression is that it will be found easier to teach substantive law and procedure in connection with each other, than to teach substantive law alone. I do not mean easier for the teacher, but easier for the student, for these two great branches of the law are so closely related to each other that the student can more readily grasp the situation with which he is afterwards to deal.

Then, too, I would urge the question of the students' note-taking as worthy of consideration. Much depends upon careful training in this direction, and its value cannot be over-estimated. It strengthens the faculties of judgment and discrimination as nothing else can do. The mental operation involved in extracting the essence of a lecture does not cease when the law student leaves college. The acquired habit of sifting the chaff from the wheat will stand him in good stead when worthy clients seek his aid and insist upon telling him the whole story. More important still, good note-taking enables him to deal more effectively with the arguments of opponents when engaged in court. The student who borrows notes for examination purposes only forgets that the lawyer is a real note-taker throughout his entire career, and that class notes afford a splendid foundation for their taker's

professional future. The vital importance of this branch of the work should, I hold, be impressed upon all students by thorough compulsory training commenced on the first day of college, and never ceasing until they have proven themselves proficient.

The object of law schools ought to be to develop good lawyers so far as their means will allow. The lawyer is essentially a practitioner. The law school, therefore, should strive to do what it can to prepare men for practice. Of course, I know that the student will learn far more in future years of his active practice than the school can teach him, but a great deal of special stress should be laid upon the necessity for a thorough foundation in the fundamentals of legal principles, for I know full well that no matter what a lawyer may do in the way of the study of law, unless he has the fundamental principles properly grounded in him, he is utterly helpless. If he goes to the law school to learn how to practice law, the school should go as far as possible in teaching him the very things he wants to know. It should teach him the elementary principles of the law, thereby affording him to lay a thorough foundation in fundamentals. It should go farther,—it should show him by the study of cases how the great lawyers wrestled with and solved the problems of the law and it should finally give him problems to solve for himself, and should watch, direct, and criticize through all the stages of the case, helping him to realize, appreciate, and understand the difficulties, teaching him at the same time, by actual practical experience, how to avoid pitfalls and reach the desired results.

In the College of Law of the State University of Iowa, under the supervision and in charge of the reader, a practice court is conducted. Two years ago, upon entering the performance of his duties in that institution, he found in vogue a system of moot courts similar to that in law schools of other universities, good as far as they went, but, he believed, they did not go far enough. At that time there was an arbitrary set of rules governing the moot court, which, upon the completion of the course by the student, he was compelled to forget, and then when he embarked upon the practice of his own profession as a reality, he was required to familiarize himself with the rules of procedure and practice as contained in the statutes of our own State.

Now common law pleading and code pleading are thoroughly covered in separate courses by students of the first year class, and when they enter upon the second year they are reasonably familiar with the theory of pleading. Then some practical work in the drawing of pleadings is undertaken. A statement, being an informal recital of facts, very similar to that which a client would give a lawyer in consulting him about his case, is given to all of the members of the class. This statement contains evidence, immaterial matters, and conclusions, all mingled with the ultimate facts of the case in such a way that close discrimination must be exercised in analyzing and segregating the essential elements of the cause of action. With the facts constituting plaintiff's case are those to be relied upon by the defendant. Each student is required to take this statement of facts and draw a complete set of pleadings based upon the situation therein disclosed, raising the meritorious issues of the case. Each student is also required to study these illustrative sets of pleadings and compare them with the pleadings drawn by his classmates, to look up all questions involved, criticize them unsparingly and rigidly and thus be prepared on the subject of the proper manner of pleading in the given case. Specific mistakes are then pointed out in each and every instance. After this discussion each one of the class is then required to draw an amended set of pleadings of the same facts, thus covering and rectifying any defect in the original pleading. This process is repeated as often as time will permit.

After the preliminary work in pleading, the practice court work proper is then taken up. The students, as practicing attorneys, are given a statement of facts relating only to those things which a client would state to his lawyer when he retains him to protect his interests in the litigation. That is to say, the attorney for the plaintiff has no knowledge of what is going to be the defendant's defense. In other words, all that the respective attorneys gather from their statement of facts is just what a client would tell his lawyer when consulting him with reference to his side of the case. Usually there is but one lawyer on each side of the case, thus compelling everyone to work out the details for himself. However, in some of the larger and more important cases, the students associate themselves into firms.

The statement of facts is in every case gathered from abstracts of cases then pending in the Supreme Court of our State. These abstracts are taken and the names of the parties to the suit are changed, so that the students may be prevented from procuring a copy from the real attorneys in the case, but in all other respects the facts are precisely the same and the case is tried in our practice court upon the same evidence as when the issues were first tried in a real court. The merits of the issues in each case are determined by the general weight of authority, but all questions of pleading and practice are determined by the rules, statutes, and decisions of this State. The Code of Iowa contains the rules of the practice court and not a set of arbitrary rules drafted only for the purposes of meeting the convenience of a play court, but the students in the practice court familiarize themselves with the statutes pertaining to the rules of general practice.

The commencement of the action by the service of an original notice, the convening day of the term as well as default day, all conform in every respect to the rules laid down in the Code governing the actual practice. From the time the original notice is placed in the hands of the sheriff for service, until the motion for a new trial has been ruled upon, in every respect the methods of procedure and practice as laid down in the Code of the State of Iowa are complied with so that the student is given a clear insight into what will be his duty when he embarks upon the practice of his profession as a reality.

The pleadings are examined and searched for errors with care and discrimination, and the multitude of motions and demurrers brought on in the practice court cover a wide range of questions and frequently develop difficult and intricate points of pleading and practice. In these arguments there is nothing of fiction. The question is always an actual one, raised upon actual pleadings. The objections are based upon statutes, the rules of the court and the decisions of the State where the venue of the action is laid. After the issues have been settled, the counsel then proceeds to substantiate them by the introduction of oral testimony gathered from the abstracts of the case from which the statement of facts is taken. The students familiarize themselves with the facts in these cases and act in reality the parts of the witnesses.

Their testimony is precisely the same as that of the witness in the actual trial of the case. Nothing of fiction is permitted. Cases at law, both tort and contract, and cases calling for equitable relief, are given out and tried in this manner. The members of the first year class are detailed for jury service and eagerly attend and manifest a great deal of interest in this class of litigation.

The modern actual court room with its judge's bench, witness stand, clerk's desk, jury box, trial table, reporter's desk, etc., is duplicated in all respects. The practice court room is large enough to hold a considerable number of spectators, and the students are encouraged to visit the court even when they have no matter of their own pending there. This privilege is generally taken advantage of and the arguments are usually listened to by a judge, and a keenly appreciative audience of students, as well as strangers. Then during the latter half of the students' senior year's work, there is organized an Appellate Court whereby appeals are perfected in the same cases from the trial court. The rules governing this Appellate Court are found in the statutes of this State governing the rules of procedure and practice in use in our own Supreme Court, and not an arbitrary set of rules drafted for the purpose of the moot court only.

Decisions and opinions are written thereon and then when the decisions of the Supreme Court of this State appear in the State Reports, they are eagerly consulted for the purpose of ascertaining whether the opinions of the court of last resort of the practice court are right or wrong, and to see wherein any difference lies, and the reasoning therefor. Thus it will be seen that the students act as witnesses, jurors, and judges, in the various cases so that they have an opportunity to view the proceedings from the witness stand, the jury box, the attorney's table and the Bench, and to observe how their classmates conduct themselves in these same positions.

Each jury is empanelled in accordance with the practice of this State and under the same procedure. Witnesses are sworn and evidence is introduced; objections are made thereto and exceptions taken; motions for a directed verdict are made; instructions drawn and submitted to the jury; arguments are made,

and the verdict is rendered. Then, within the statutory time, if the attorneys so desire, motions for new trials are made and ruled upon, and every element of the actual trial is present save the pecuniary interests of the parties to the suit, but that is overcome by the eagerness and earnestness with which these trials are prosecuted, for the attorneys dislike above all things to suffer the bitterness of defeat in a practice court.

The practice court does not supplant any course in the substantive law. It does not take the place of the thorough study of the theory of pleading. It does not even exhaust the attention given to practice itself, as contained in the text books, but it does attempt to give and create a flavor to the work of the law student, to present legal problems to be solved as a lawyer is expected to solve them; to enable the student to judge the value of cases by actually using them and to appreciate the functions and the meaning of the principles of the substantive law by putting them into practice. This court has not by any means reached its finished stage. Every year sees alterations and improvements, but it is encouraging to see the active spirit and eagerness manifested in the trial of the practice court cases.

Procedure is the skeleton of our jurisprudence. When we dispense with the study of procedure, we shall also dispense with the knowledge of the law. The study of procedure as covering all the processes of trial and appeal after the pleadings are closed up to the satisfaction of judgment, deserves separate treatment as a regular course in every system of law school instruction.

The principal difference of the law school instruction between schools of the east and those of the middle west is that ours is a practical legal education; the finished product of our law school does not expect to enter the office of an old practitioner as an apprentice, as does his eastern brother, but he wants to be able to embark upon the practice of his chosen profession for himself, immediately upon the completion of his course in the law school. And I venture the assertion, in a great many instances, at the next or subsequent general election, the recent graduate of our law school is a candidate for the prosecuting attorneyship of his county.

Therefore I concur in the opinion of one of the greatest law

school educators, "that it is the function of the law school, not simply to teach law or to make lawyers, but to teach law in a grand manner, and to make great lawyers". The lawyer who goes forth to his life work, trained in the technical details of his profession, need not lose the scholarship which has made our calling illustrious, but he should add to the usefulness and the value of our profession and earlier win the high reward of weaving the principles of right into the daily life of the world.

THE PRESIDENT: This concludes the program for the afternoon. There are a few committees yet to report. Is the committee to which was referred the recommendation of the Librarian, of which Justice Deemer is chairman, ready to report?

JUSTICE H. E. DEEMER: We have had an informal meeting, but we have thought it impractical to report until we knew something about the expense to be incurred.

THE PRESIDENT: Is the Auditing Committee ready to report?

J. B. WEAVER, JR.: Your committee makes the following report:

REPORT OF AUDITING COMMITTEE

We have examined the report of the Treasurer and the vouchers therewith, and find same correct and the same is approved.

June 29, 1911.

J. B. WEAVER, JR.,

H. M. REMLEY,

J. J. CLARK,

Committee.

Upon motion duly made the report of the committee was received.

THE PRESIDENT: Would it not be well for us to select our Nominating and Executive Committees at this time?

JAMES O. CROSBY: I move you that these committees be selected now.

The motion was duly seconded and carried.

THE PRESIDENT: The practice has been for each Congressional District membership to select one member of each committee and

announce the same upon roll call. Will the members of the respective districts get together and select a member of the Nominating Committee and a member of the Executive Committee.

The roll of the districts was called and the following members were announced :

NOMINATING COMMITTEE

1st District, Harold J. Wilson
2d District, J. F. Devitt
3d District, (not given)
4th District, Judge A. N. Hobson
5th District, F. F. Dawley
6th District, William McNett
7th District, J. C. Davis
8th District
9th District, W. C. Ratcliff
10th District, E. G. Albert
11th District, Scott M. Ladd

EXECUTIVE COMMITTEE

E. D. Morrison
H. C. Horack

J. H. McConlogue
Judge H. M. Remley
Judge W. R. Lewis
Judge J. H. Henderson
L. H. Mattox
O. W. Witham
J. W. Morse
W. P. Briggs

At this time an adjournment was taken until 9 o'clock A. M., Friday, June 30, 1911.

BANQUET PROCEEDINGS

(Lacey Hotel, Thursday Evening at Eight o'clock)

RESPONSES TO TOASTS

HON. J. L. CARNEY, Toastmaster: At the threshold of this talk-fest, I desire to express, entirely aside from the formal thanks of the Association that will be extended tomorrow, my appreciation of the warm-hearted and spontaneous hospitality that has been extended toward us by the members of the Oskaloosa Bar. They have, indeed, by their efforts on this occasion made a deep impression, I am sure, upon the minds of all of us, and it will be an occasion long to be remembered.

I congratulate you gentlemen on gathering in such goodly numbers at this the seventeenth Annual Session of the State Bar Association, and as usual we have met on this banquet occasion to engage in social intercourse, which is such a charming feature of our meetings generally, and to eat, drink, and be merry; the eating and drinking portion of the program has been quite successfully accomplished, judging from the very abundant repast we have enjoyed, and I have no doubt that the gentlemen whose names appear upon the program are ready to make the occasion an enjoyable if not a merry one.

A noted and popular toastmaster of the city of Chicago formulated a few rules for an occasion like this. The first one was that it was the duty of the toastmaster to make his speakers feel at home, and he added parenthetically that even an experienced speaker wishes sometimes that he was. Another was that the toastmaster should not monopolize all the time set apart to the speaking, but he should leave some of it to the respondents. And again, that it was the duty of the toastmaster to please everybody and offend no one. This last is an almost impossible task, but on reflection I think the nearest approach to it is to turn at once to the program.

There has been a suspicion growing for years in the neighborhood of the court house at Marshalltown, that the law is not on

all occasions and at all times a sure thing. I well remember a remark my former partner, a genial man and good lawyer, Judge Henderson, made in social converse with his legal friends, after talking upon some mooted point of law, in his eloquent way he would turn around and look at us with a quizzical smile and say: "Well, boys, it is either that way or the other."

I notice that a feeling of distrust has penetrated into proud old Mahaska. The first toast upon the program is "The Uncertainties of the Law", by Hon. J. A. Devitt, of the local bar.

UNCERTAINTIES OF THE LAW

Mr. Toastmaster and Members of the State Bar Association:

Before taking up the subject that has been assigned to me, I desire to extend to you the kind appreciation of the local Bar Association for the many expressions of appreciation for our humble attempts to make your visit with us a pleasant one.

Many years ago Macklin put into the mouth of one of his characters the statement:

"The law is a sort of hocus-pocus science that smiles in yeer face while it picks yeer pockets; and the glorius uncertainty of it is of mair use to the professors than the justice of it."

This criticism, which might be excused on the ground of poetic license, has been so often repeated that it has come to be the common practice to refer now-a-days to a legal controversy between man and man as being, not an attempt to ascertain the very truth or right of the controversy, but that it is a test of wits between the attorneys, and he who is the more clever, or unscrupulous, the unkind would say, is the winner. We know that this statement is a libel on the practice of the law in this State.

Before calling attention to some of the uncertainties of the law, I believe we can readily see why the general public at times is led to believe that uncertainty is the rule and not the exception in litigation. There are many uncertainties in the trial of law-suits that, after all, receive the approval of us all. I am reminded in this connection that the lawyers are always blamed for the mistakes juries make. That the verdict of a jury is uncertain has been fully borne out by the experience of each and all of us. However, there are times when the difference between

a verdict, based on a strict construction of the law and a verdict that is savored with the human frailties of the jury box is such that it might be said to be "a vice that leans to virtue's side".

In the neighboring county of Washington, where there are many lawyers and many more politicians, an humble citizen went forth, entirely ignorant of the fact that the Legislature of this State had made sacred the catfish and the carp and provided that they should not be caught during certain seasons of the year. He went forth and caught sixteen carp. Unfortunately for him, a gentleman from the "City of Certainties", who was also a Deputy Game Warden, became cognizant of the fact and had him arrested, and, when hauled before the Justice of the Peace, he frankly admitted that he had caught sixteen fish, as charged, and entered a plea of guilty, in the belief that, of course, the Justice, being an old friend and neighbor, a small fine and the payment of the costs would clear the docket; but his ignorance of the law was about to be impressed upon him in a manner which almost broke his heart and seriously dented his pocket book, when he was advised by the gentleman from Des Moines that the informant got \$10.00 for each fish, and also an attorney's fee of \$10.00 for each fish, and that he must be fined \$10.00 for each fish, and in addition had to pay the costs. When this bill was finally footed up for him it resembled nothing so much as the primary expense bill of a Congressional candidate in the Seventh Congressional District.

At this stage of the proceedings he consulted a lawyer, and the lawyer promptly advised him to appeal, and the appeal came on for hearing in the District Court to a "jury of his peers". He was here confronted with his admission made to the Game Warden and the Justice that he had caught sixteen fish, and that he had plead guilty to catching these sixteen fish. After hearing the evidence and the argument of counsel for the fisherman, who dwelt as fully as the court would permit upon the atrocity of permitting a man from Des Moines to come down and mulct a neighbor and friend and fellow farmer, and after listening to a declaration from the bench, which the court stated was the instructions in the case, but which the attorney for the defendant characterized as the closing argument for the State, which in-

structions duly set forth that it was "the duty of jurors to march forward in the discharge of their duties without fear or favor, let the consequences be what they may", the jury, duly impressed by the instructions, filed out, and after long deliberation came into court with a verdict finding him guilty of catching one fish. The Game Warden from Des Moines, who thus saw his revenue interfered with, accosted the foreman of the jury and demanded how, in the face of his oath as a juror, he could bring in such a verdict in the face of the fact that the defendant himself had plead guilty to catching sixteen fish, and the foreman, with a wisdom born of innocence, and a knowledge that the defendant resided in his county, promptly replied, "Why, don't you know, you can't believe anything these fishermen say about how many fish they caught?" We would readily agree that, if it was not our sworn duty as lawyers to uphold the administration of the law, our sympathies were entirely with the reasoning of the foreman of the jury.

But it is not only among fishermen that we find we cannot always rely on what men say, but even the less distinguished hunters are assailed and their exploits questioned and uncertainty cast upon their prowess in this unbelieving age. A distinguished United States Senator a few weeks ago, in the United States Senate, discussing the hunting exploits of the late President, declared that he was a wonderful man.

"That the late President had stood before an audience of three thousand people and in the most vivid manner described how he stood at midnight on the edge of the Nubian Desert, on the banks of a river that never existed, and, after a desperate combat, killed a mythological animal that God had never made."

And the Senator added that "the audience were stirred to applause". So it is that uncertainty not only is an element to be contended with by the lawyer, but by the layman and hunter as well.

A few years ago the Supreme Court of the United States decided a case by a vote of five to four. One of these Judges on reargument changed his opinion, and ever since that time he has been bitterly assailed because he changed his opinion. Now if the fact that one Judge changed his opinion upon a great consti-

tutional question was reason for excitement, then the people in Iowa have frequent cause for excitement, because it not infrequently happens that, after seriously deliberating and carefully considering the questions submitted on an appeal and writing out a formal opinion, in which all of the Judges concur, the whole six Judges change their minds and frequently admit that they were all wrong in the opinion in which they all had concurred. This is one of the uncertainties of the law that it is hard to explain to the layman. As an illustration: We had a man in this county, whose name was Brown, who was accused of the crime of adultery and was convicted. The corroboration required by the statute was established, according to the claim of the State, by certain letters that the defendant had written from the jail to the woman in the case. The trial court concluded that if the defendant wrote the letters introduced in evidence it was sufficient corroboration to justify the jury in convicting the defendant. The jury promptly convicted the defendant. The case was appealed to the Supreme Court. After mature deliberation, that august body rendered an opinion in which all concurred that the trial court was right in submitting the letters to the jury, and that if the jury found the defendant wrote these letters then they furnished ample corroboration to justify his conviction. On a petition for a rehearing before the court, consisting of the same distinguished six Judges, they re-read these same letters and then solemnly concluded, and in another opinion declared, that there was nothing in the letters that corroborated the story of the woman in the case, and that the court erred in submitting the case to the jury. This change of opinion was not the cause of any excitement, but is a good illustration of the uncertainties of the law. The jury who convicted the defendant knew little of the technical requirements of corroboration, but they knew the defendant, and, I might be permitted to add, that the Supreme Court was not acquainted with the defendant and were not clear on corroboration, or else their unfamiliarity with letters of this character made it necessary for them to have additional help in determining their real meaning.

That the uncertainties of the law, unfortunately, do not all result in the acquittal of men who are not guilty of crime is too

true. The profession has been startled in the last few months by the release, by the Governor of Pennsylvania, of a convict from one of its State prisons who had served twenty years for a crime he had not committed. It required the pardoning power to release him. Uncertainties of the law that result in the conviction and incarceration of the innocent are a just reproach to the legal profession. Such uncertainties are often brought about by the hue and cry and demand of the mob that some one should be punished for a crime, and, too often, the officers charged with the duty of prosecuting crime are satisfied by finding a victim, rather than by finding and punishing the criminal. And it is certainly a reproach to our civilization that this man, after serving twenty years at hard labor for a crime of which he was not guilty, receives no recompense from the State that was responsible for his incarceration, but is dependent on a private individual for a pension, to make redress to some extent for this legal wrong.

Another case to which the attention of the profession has been recently called is the situation growing out of the Patrick case in New York, where the defendant, whom we all agree richly deserved a long term in the penitentiary for fraud and forgery, was convicted and sentenced to death for murder upon the evidence of two physicians who testified on the trial to the facts that made it possible for the Court of Appeals, by a divided court, to sustain that conviction. This testimony was that they observed a condition of the lungs that could only have been produced by chloroform, and that in their opinion could not have been produced by the embalming fluid that was used upon the body. It now develops by the testimony of an association of undertakers in New York that the exact conditions described by these physicians, as existing in the autopsy of the body of Mr. Rice, invariably occur from the use of the embalming fluid that was used on the body of Mr. Rice. Certainly in this case the embalmers, or undertakers, who handled the finished product of the physician are clearly right, and the man Patrick was sentenced to death upon the expert opinion of two physicians who were ignorant of the facts about which they testified.

I heard some one say the other day that he did not understand why it was that there was such a large number of lawyers be-

coming interested in Christian Science, which was promptly answered by a lawyer that it was because they so frequently listened to the examination of medical experts.

The uncertainties of the legal profession are the uncertainties of human nature. As a matter of fact, the administration of the law in criminal cases is as near perfect and as free from uncertainties as it is possible in any institution of human origin, as we will readily ascertain by comparing its results with those of any other human profession or calling. Nowhere but in the millennium will there be a law that will be without its uncertainties and without seeming injustice.

“In the corrupting currents of this world
Offence’s gilded hand may shove by justice,
And oft ’tis seen the wicked prize itself
Buys out the law; but ’tis not so above;
There is no shuffling, there the action lies
In his true nature; and we are ourselves compelled
Even to the teeth and forehead of our faults
To give in evidence.”

The legal profession, through its efforts, has removed many of the uncertainties of the law. We have not yet been able to remove the uncertainties of legislation, and perhaps never will be able to do so. The uncertainties of legislation, as well as its volume, is one of the problems confronting our civilization. As an illustration: Under a movement that had its origin in this Association, the Legislature of our State enacted a so-called parole law. The theory upon which it was enacted, and the purpose for which it was advocated, by the men who gave the subject much study, was upon the ground that a system confining men in the penitentiary for a fixed term was unfair to the criminal; that every inducement should be held out to the criminal to reform by shortening the time he must serve in prison and by a watchful oversight on his release to assist him in becoming a useful citizen. So it was enacted by the Legislature that the power of fixing sentence was taken out of the hands of the District Judges, who were peculiarly fitted to determine the merits and particular punishment of each case and the time of their incarceration in prison, and was left to a Board of Parole. We are now advised that in practical operation this has actually increased the average time

spent in prison by the criminal, and that in attempting to alleviate his condition we have added to his burden. This is one of the uncertainties of the law that this Association should assist in removing.

This Association is particularly and peculiarly fitted to assist in removing the slur that the practice of the law is a "hocus-pocus science". The practice of the law is a profession of which its members are justly proud, a profession that has aided, and will continue to aid, the most advanced thought for the general betterment of mankind, and, instead of being a "hocus-pocus science", it is "the perfection of human reason", and may we be able to establish in the popular mind the thought that:

"Our human laws are but the copies, more or less imperfect, of the eternal laws, so far as we can read them."

THE TOASTMASTER: Congratulating the gentleman upon the eloquent response he has made, the thought occurred to me what a suggestive toast it would be to combine the toasts, "The Uncertainties of the Law and of the Judge."

As young men we always used to think that the Judge *was* the law. I think it was Major Lacey who, in his welcoming address, gave us permission to tell old stories, and this reminds me of the story of the practitioner, a rather young man, who was making an argument to the court and quite a forcible one. After a little the judge said: "I will hear from the other side",—which is always a very welcome remark. But the young man kept on talking just as persistently as before. An older lawyer, noticing the situation, leaning over, said to him in a whisper: "Sit down, the Judge is with you." "Yes, I know it," said he, "but will he stick?"

The next toast upon the program is "The Judge and the Law" and will be responded to by the Hon. J. M. Parsons of Des Moines.

THE JUDGE AND THE LAW

Mr. Toastmaster and Gentlemen: The subject assigned me is not a happy one, because as the toastmaster has just stated to you, I had made up my mind to say that the judge is the law.

I have usually found it to be true that in all countries governed by our Anglo-Saxon system of jurisprudence that the judge is the law, or at least comes very close to being the law.

When we go back into the history of the law, and take up the first great document we have, which might be called the foundation of human rights—the *Magna Charta*—which has been called the charter of our liberties, without the judicial constructions placed upon it by the judges of the past, it would amount to but very little. It was originally a document meant only for the benefit of the nobles, but by the argument of the lawyers and the decisions of the judges its principles became greatly extended, until it became widened in its scope so as to apply to everybody, so that eventually all became entitled to the privileges that were granted to the nobles.

Take the Constitution of the United States, when it was first adopted it was but a skeleton of the framework of the government. Men had but little conception of the government they had set up over themselves. As we have been reminded today, after listening to the able paper read by the President of this Association, we call to mind the great work done by John Marshall in welding it and filling out this framework of the Constitution and in making the government what it is today. It is to the judicial branch of the government we owe the strength of our institutions and their permanency as they stand today. We might point out the stretch of federal authority by the judiciary—and I am not saying this in a complaining way, I think it should have been done. Note the wide jurisdiction our Federal Courts today exercise, for instance, over all the great corporate cases which come before them. It will be conceded by any one who will give the matter a moment's thought, that it was necessary for the Federal Courts to assume this wide jurisdiction on all these questions, because the States are so constituted that it would be practically impossible for them to deal with the questions that arise in many of these great corporation cases; and yet when the first great corporation case came before the Courts of the United States, in which it was sought to have the Federal Courts exercise jurisdiction by reason of the fact of diversity of citizenship—a corporation on one side and a citizen of another

State on the other, John Marshall said: You are not a citizen; when the framers of the Constitution used the word "citizen", that didn't mean you. And this remained the law of the United States until in the fifties, when the fiction was invented by the judges of those days that, for the purpose of jurisdiction, it would be conclusively presumed that each and every stockholder of any corporation was a citizen of the State in which it was organized, and it is upon that fiction today that our Federal Court jurisdiction over the great corporate cases is based, for there is scarcely one of these corporations that has not stockholders in each and every State in the Union. I am not saying this in a complaining way; I believe without some provision of that kind incorporated in the law, it would have been impossible for us to reach the great development we have reached at this time.

Let us take another branch of our law, the so-called fellow-servant doctrine, which was not the doctrine of the common law, and which was never enacted by statutes, but came originally from the decisions of the judges of the courts of last resort within the last one hundred years.

Now, the judges are usually conservative persons. There is something in the position that makes a judge conservative, and legislation, which you might call judicial, has most of it been wise. But it seems to me that the time has come when a halt must be called upon judicial legislation. Conventions may meet and formulate constitutions; Congressmen and State Legislatures may enact statutes, but the law finally is what the judge says it is, even if it takes the forms of an interpolation or an elimination in the construction of a plain statute. Such constructions but tend to confuse, and many times are they indulged in. Take, for instance, the question of the income tax in the United States. In the sixties, if I recollect correctly, we levied an income tax, writs of execution were issued and men's property was sold, and the cases went to the Supreme Court of the United States, and that tax was upheld, and it was expressly decided that an income tax was not a direct tax. So that at that time we had the Constitution of the United States permitting the Congress to levy an income tax, because it was then held not to be a direct tax.

Yet we find the same Court a few years after that deciding that the income tax was a direct tax. The interpretation of the judges of the sixties was wiped out. Today we have the power to do it, and tomorrow we do not have that power. In other words, you had an amendment to the Constitution of the United States, adopted by a majority of nine men, just as effectual and just as binding as if adopted by two-thirds of Congress and three-fourths of the States.

Take the last decision of the Supreme Court in the Standard Oil case. I speak of that, not because I quarrel with that decision, because I want to say now that I believe that any legislation, such as Congress indulged in in the Sherman Act, that forbids any contract of any kind in restraint of trade in broad terms, as stated in that statute, was not wise, because it would not be possible, it seems to me, to carry on commerce with such restrictions. After two or three interpretations by the Supreme Court upholding this act of Congress, that any contract in restraint of trade in the United States is a nullity, within a short time afterwards we see that same court inserting the word "unreasonable", when it had expressly told litigants time and again that since Congress had not inserted this word, we must construe the law as it was written.

Let us go to our own State, and I am not mentioning this because I dislike or think the law should not be as finally laid down. A few years ago, in a case which I took up myself concerning the issue of some bonds, a statute had been enacted which provided that any school district which had judgments outstanding against it prior to the passage of this act should have the right to issue bonds to pay them. The statute was passed by the Legislature in April and took effect on the 4th of July. In the month of May a man recovered a judgment against the school district, and this was subsequently bonded. The bonds came into my hands for collection. I brought suit and I was kicked out of the lower court and took it to the Supreme Court, and in passing upon that act they said that the phrase, "prior to the passage of this act" and all similar phrases, meant and had reference only to the time that the act took effect. Yet, we find that the Supreme Court of Iowa recently held, in the Moon Law cases,

that "prior to the passage of this act", and all similar phrases, meant at the time it actually passed the Legislature, and not the time it took effect. I mention this, because this rule of statutory construction violated goes so far back that the memory of man runneth not to the contrary.

These are items of judicial legislation the judges have been indulging in in recent years. The question naturally comes up, where will it lead us? In that connection I am reminded of the experience of a friend of mine who is United States Attorney for the Northern District of Iowa. One of the Post Office Inspectors came out, and he thought he had discovered very great infractions of the post office laws. He gathered up his witnesses and he brought them before the grand jury. The grand jury ignored his bills and he became suspicious of the District Attorney. He said: "Here, Mr. McMillen, I don't like this." Mac said to him: "You looked this matter up yourself and presented it to the grand jury, and did your duty, and the grand jury ignored your bill, and they did their duty too as they saw it." Yet the inspector was not satisfied, and Mac got mad at him, and he said: "The framers of our Constitution divided this government into three great departments—the Legislative, Judicial, and Executive. They might have turned the whole d——d thing over to the Post Office Department, but they didn't."

The framers of our Constitution said that the legislature had certain functions to perform, and that was to formulate new laws; that the judiciary had certain functions to perform, and that was to interpret them and to declare whether or not they were constitutional. So that the only inquiry, it seems to me, a court has a right to make is to inquire whether the power existed in the legislative body to make this act, and if that power exists, then to construe it as passed by the legislature. Do not let us construe an act as not passed by the legislature—putting the word "unreasonable" into it when Congress has refused to put it in. We hear the complaint that in the Constitution of Arizona the recall is provided for and it is made applicable to the judges as well as to other people. Now, if the judges are to assume the duty of passing upon the wisdom of the legislature, by interpolation or elimination, so as to emasculate our statutes by ju-

dicial legislation, why should not they be subject to the same rules that the other officials of the State or government are.

I want to call attention to a few words in the dissenting opinion by Justice Harlan in the Standard Oil case:

"After many years of service at the National Capitol, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction."

Now, I believe you members of the bar, if you have examined many of our decisions made in recent years on public questions, will agree with Justice Harlan that such is the case. I do not believe that these things are done with the intention of doing wrong, because, I can say, after an experience of thirty years at the bar, before all kinds of judges, of all political complexions, I never yet saw a judge do a thing that he consciously thought was wrong. Again Justice Harlan said:

"To overreach the action of Congress merely by judicial construction, that is by indirection, is a blow at the integrity of our governmental system and in the end will prove most dangerous to all."

Mr. Justice Bradley wisely said, when on this bench, that "illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of legal procedure".

If this power to correct legislation is to exist, it will gradually wipe out the other powers of government. If the judges have the liberty of interpolation or elimination, in other words, of re-making and rewriting legislative enactments, then they are the power to which you must really look for all of your law, both statutory and common law; the effect of which will in the end be detrimental to our institutions and the judiciary itself, because when a people once loses confidence in the judiciary, God help that people.

THE TOASTMASTER: It is no secret, gentlemen, and even the most casual reader is acquainted with the fact that for some years there has been prevailing the impression on the part of the owners of our railway systems that there has been on the part of

the law-making bodies a sort of hostility to the railroads. That is, that some statutes have been passed that bear too heavily upon them. I take it, while not desiring to forecast the remarks of any speaker upon any subject, and knowing the happy and genial nature of our friend who will respond to the next toast, that it will be no lamentation upon the part of the railroads, but that he will find that the railways of our country have many things to be thankful for. I think he will sympathize with the feeling of the old colored lady who attended a camp meeting in the wire grass region of Georgia. Uncle Mose Bradford was the leader, and had announced his text from Paul: "For I have learned in every state I am, therewith to be content," and after discussing the subject for a time, said he would throw the meeting wide open and exhorted anybody to get up and express themselves upon that text. Some of the speakers expressed thankfulness under almost impossible conditions, and some were thankful for things they had received, and finally an old colored lady arose, pushed back her sun bonnet and with a countenance beaming with satisfaction, exclaimed: "Well, Uncle Mose, I ain't got but two teeth, but thank God they hit". Our friend may find that the railroads have but two teeth, but that "they hit".

I take pleasure in introducing the Hon. J. C. Davis of Des Moines, who will respond to the subject, "The Railroads and the Law".

THE RAILROADS AND THE LAW

Mr. Toastmaster and Gentlemen of the State Bar Association:

Contemplating what has preceded, and anticipating what is to follow, I have concluded I am a three minute horse in a two- forty class, and that probably I had better forfeit my entrance fee.

An extended or serious discussion of the proposition, "The Railroads and the Law", cannot be indulged in upon an occasion of this kind. No one can even briefly debate the relations of railroads to the law without some consideration of the marvelous, I might say miraculous, growth of the transportation interests of this country—a development that is a splendid tribute to the ingenuity, courage, and enterprise of American genius. It is no phrase of the imagination or oratory to say that the rail-

roads have annihilated distances, overcome mountains, and made traveling over barren and desert wastes safe, convenient, luxurious, and enjoyable. It is a statement of fact, rather than a pleasant vagary of fiction, when we say that the railroads of America have been the most potent element in the general settlement and prosperity of the country at large.

It is said the first railroad built in this country was used in the construction of the Bunker Hill Monument. This road, not a steam road, was constructed in 1826, and was about three miles long. The first real railroad of any length, constructed and operated in this country, was known as the Charleston & Hamburg Railroad, located in South Carolina, was about one hundred and thirty-seven miles in length, and for quite a period was the longest railroad in the world.

It is a far cry from that little, poorly constructed affair to our splendid national system of railroads, comprising a main line mileage of nearly two hundred and forty thousand miles, representing an investment of over sixteen billion dollars, employing a great army of men, in excess of a million and a half, and paying annually, in wages and salaries, over one thousand million dollars.

The period of railroad construction is sometimes divided into three stages. The experimental was from 1830 to 1850, when the building of railroads was largely in the nature of a speculation or experiment. From 1850 to, say, 1870 was the era of unquestioned private ownership, when townships, municipalities, counties, States, and the Federal Government were all making generous donations, and giving liberal assistance in the construction of roads, the purpose of which was to encourage the settlement and development of new territory. This was the era in which, in railroad property, there was everywhere recognized private and individual ownership. From about the year 1870 to the present time may be considered the era of governmental control.

The first great case defining the right of the government to control the compensation to be paid for services rendered by carriers was that of *Munn v. Illinois*, 94 U. S., 128, where the constitutionality of the railroad commission laws of Iowa, Illi-

nois, and Wisconsin was in dispute. The Supreme Court, in sustaining the right on the part of the government to control tolls, charges, and rates as made by common carriers, laid down a few brief principles which are the basis of the present extensive laws of the several States and the Federal Government on this subject. In the course of the opinion, the Court said :

“Common carriers exercise a sort of public office, and have duties to perform in which the public is interested. Their business is, therefore, ‘affected with a public interest’.”

And, again, the Court said :

“But we need not go further. Enough has already been said to show that, when private property is devoted to a public use, it is subject to public regulation.”

It may be of some interest to note that, in the course of this opinion, the Supreme Court quoted from a statute of England enacted in the third year of the reign of William and Mary, which statute sought to prevent combination between wagoners and carriers, the preamble of the statute reading as follows :

“And whereas divers wagoners and other carriers, by combination amongst themselves, have raised the prices of carriage of goods in many places to excessive rates, to the great injury of the trade; Be it, therefore, enacted”, etc.

This indicates that combinations on the part of carriers and others engaged in commercial enterprises is not new or original. Since the time of the rendition of the foregoing opinion, the growth of government control has proceeded with such rapidity that about all that is left to the average railroad is the right to operate, and the responsibility of attempting to earn a fair income on the money invested. In fact, we now have practically government ownership, without the responsibility of operation on the part of the government.

The serious difficulty with the railroads and the law is the multiplicity of the laws, and, in many jurisdictions, such apparent conflicts that it is almost impossible to obey them all. Take a great system like the Rock Island, which runs through sixteen different States. Every two years sixteen industrious legislatures are passing laws entirely independent of each other, and a shipment of freight, or a passenger, passing over the entire

system, would pass through sixteen independent jurisdictions, each one eager to regulate and control in some way not only the operation of the railroad, but the rates and tolls which it may charge.

Take our own State. Last winter in Des Moines there were introduced over eleven hundred bills, and a conservative member of the Senate told me that he believed one-third of them were either amending, repealing, or substituting some act of a preceding Legislature, and, out of this vast number of bills, nearly one hundred directly affected railroad companies.

Many of these laws are impracticable and impossible to perform. Take, for instance, the speed limit law. On the main line of the North Western Railway, running from Clinton to Council Bluffs, there are over sixty miles of this road within the limits of cities and towns where a rate of speed in excess of six miles per hour is unlawful. In other words, it would require every train to take ten hours in passing through the territorial limits of the towns between the Mississippi and Missouri rivers. There are many trains which make the entire distance of three hundred fifty miles in less than ten hours. Everyone recognizes and admits the impossibility of complying with laws of this character.

Take the Federal sixteen hour law applied to employes and the twenty-eight hour law applied to the transportation of cattle. It is not infrequent that we find a situation where the sixteen hour limit as to employes will expire, or there is no place where we can unload, feed, and water the cattle within the twenty-eight hour limit. It is, therefore, impossible, unless we should construct and maintain expensive terminals at every little station, to always comply with these conflicting laws.

It would seem that great interstate corporations, whose principal source of income and whose principal business is that of carrying on interstate commerce, should be controlled by some one central authority, which should have the right to make uniform regulations, not only as to operation, but as to rates, and, if this were done, there would be no difficulty between the railroads and the law.

The argument in favor of federal control is very potent when applied to a situation like Iowa. The great bulk of the business

done by the interstate railroads is interstate rather than local; in fact, you would be surprised to know that in the larger railroads of Iowa probably not more than ten per cent of their income in the State arises from the local transportation of freight. The recent opinion of Judge Sanborn, in the Minnesota rate cases, where he holds that local commissions cannot promulgate local rates that directly affect interstate commerce, is a long step in the direction of federal control. My duties bring me in close relation with the recurring Legislatures of the State, and I have an opportunity to observe how easily laws are passed, and with what little consideration restrictive legislation is placed upon the statutes.

I have always believed that if the regulation of railroads could be simplified, so that they could observe the law; if we could persuade the patrons along our line of road to invest in standard stock, and if there were such methods of bookkeeping adopted that the public would have confidence in the disposition of proceeds, much of the prejudice existing against railroad corporations would disappear. During the last session of the Legislature I had occasion to appear a good many times before committees considering railroad legislation, and possibly obtained the confidence of some of the members of that body. After the close of rather an interesting hearing before the Railroad Committee, one of the Senators said to me: "Do you not hate to work for a railroad all the time, and always be under a cloud?" I suggested to him that there was some compensation in the situation,—that there was the proverbial silver lining to this particular cloud, but this represents the attitude of many public officials towards railroad corporations.

Gentlemen, I hope to live to see the time when the railroad interests, which, as everyone understands, are an indispensable commercial factor in this country, shall take their proper place; when we can have regulations that shall be uniform, and ones that can be lived up to; when the affairs of railroads shall be of such public character that everyone interested can find out where the receipts go; when there may be no mystery in regard to railroad operation; when railroad securities shall be of such staple character that our friends and patrons along the line can invest

and be interested with us in them, and when such fair compensation shall be allowed that the railroads can enter into a new and more successful career, and I may be able to carry out the wish of my legislative friend, and, in representing a railroad, will not be considered under a cloud.

THE TOASTMASTER: I do not know whether the next speaker will speak on the topic printed or not. I think when it was suggested, he made some sort of remark, that it might as well be that as anything else. But I can assure you, gentlemen, he can speak on any subject he chooses, and on any subject he will be entertaining. I take great pleasure in introducing the Hon. M. J. Wade, whose theme is, "A Jury of our Peers".

A JURY OF OUR PEERS

Gentlemen of the Bar: As I look over this program and note what has been and what is, and I think of the present exalted position of the thermometer and the nice cool breeze out in the park, and realize the hour of night this banquet commenced, and the hour of morning when it will finish, I am reminded of the story that was told one time by a toastmaster after Governor Burke had made one of his short speeches. He said after he sat down, "That reminds me of a case over in Chicago, where a man had been convicted by a jury of his peers of some offense, I think an assault with intent to commit murder, and the morning came for the sentence, and the fellow came in in a hurry, and the court was in a hurry and a little out of humor, as they sometimes will be. He looked down at the fellow and said to him, "You are here for sentence." "Yes," said the fellow. "Well, your sentence is fifteen years at hard labor in the penitentiary; have you anything to say?" The fellow said, "All I got to say is that you are darned liberal with other people's time."

As I see you sitting here listening patiently to speeches, "The Law and the Railroads," the "Law and the Courts", I thought of a little story I told in introducing Mr. Bryan in St. Paul a few weeks ago. I told them that old story about the legislative meeting in Des Moines, where the women of the uplift were seeking the right to vote. I want it definitely understood that the

members of the Legislature do not have to deal alone with those "men under a cloud". At a meeting one night one of these ladies was addressing an audience and she was telling about all that women had to endure at the hands of men. She said, "We have suffered in a thousand ways". A little Irishman back in the audience said, "I can tell you one way you haven't suffered". She said, "How?" "You haven't suffered in silence."

Now, I notice tonight, you men for some reason are suffering in silence. I cannot understand why you are suffering. It is always embarrassing to be interrupted by an audience while speaking. I remember of a Progressive of the Ninth District who was making a speech last fall, and he was telling about the things that he stood for. He stood for reform. "My friends," he said, "I want tariff reform; I want money reform; I want tax reform; I want, I want"—Some fellow said "Chloroform". I think that is about the way you will feel by the time the other gentlemen get through with this program.

I also heard of a Standpatter in the Ninth who was making a speech, and he was crying out for men of conviction. He said, "These Progressives don't have any. Where will we find men of convictions?" Some fellow answered, "In jail." The fellow didn't like it, and I suppose he felt like the old Irishman at the banquet when he didn't eat salad. He was asked by the host, "Don't you like lettuce?" He said, "I don't; I'm glad I don't like it, because if I liked it I would ate it, and I hate the stuff."

Your patience is nothing compared with that of the old fellow who had an operation for appendicitis in Chicago. The morning after the operation the surgeon who performed it came in and told the old gentlemen that in the operation his associate, Dr. Jones, left a nice pair of new forceps in the abdomen, and that he was a young man and could not well afford to lose the forceps, and that they would have to open him again and take them out. The old gentleman consented, and the following morning the surgeon came in and asked him how he felt. He said, "Pretty fair". The surgeon said, "I am very sorry, in the operation yesterday Dr. Wilson dropped a steel ring into the wound, and it is a ring his wife gave him, and I am very sorry but we will have to take that out." The fellow said, "All right, if you have

to, all right." The next morning the surgeon came in and asked him how he was feeling, and he replied, "Pretty fair, but Doctor," said he, "if you have to rip those stitches open again, don't sew me up any more; put hooks and eyes on."

It was not necessary for us to have this kind of weather to tell us Oskaloosa is a "Hot Town", and to extend to us the warm welcome we received, because I remember some years ago a fellow went from Oskaloosa to the Klondyke and he froze to death, and they wired down here to find out what to do with the remains, and they wired to bring the body down to San Francisco and have it cremated. They brought it down still frozen and put it in the blast and left it burn there for three solid hours, and they went and opened the door, and as it swung back, "Shut the door, you son of a gun, this is the first time I have been warm since I left Oskaloosa."

Senator Carpenter said something about a place called Columbus Junction, and it reminded me of the story of the old preacher in Nebraska who was preaching a funeral sermon over a cow boy, and he said, "My friends, he is gone. Some men say he was good, and some men say he was bad; where he has gone to no man can tell, but in the midst of our sorrows we have this great consolation, we know he is dead."

Now, my friends, I am going to talk to you tonight about the "Jury of Our Peers"; that is, they say I am. I want to say right now, I have too much feeling for the gentlemen here tonight to undertake to make a long speech like Davis did. I am reminded, however, of what the judge said to the jury after they acquitted a fellow who was guilty. After they returned their verdict he said, "That is all, gentlemen, that fellow is guilty and he got a trial by a jury of his peers." I am reminded in that connection of a story they tell of a certain prominent railroad lawyer in Iowa, when the jury brought in a verdict which should never have been rendered, which was as contrary to law as any decision of the Supreme Court you ever saw, and the court was disgusted and displeased, and he said, "Gentlemen, that is all right; I have no control over your verdict, but you are discharged for the term." They all went out except one fellow. The judge finally looked up and he said, "I told you, you are dis-

charged." The fellow looked up at the judge and said, "Oh, you can't discharge me; that fellow over there hired me."

Now, there are a few people in this country who actually think we ought to abolish jury trials. I am opposed to abolishing the jury. They want to try their cases to the court. Now, if they are going to abolish one or the other, let them abolish the court. Why, they say, jurors don't always agree. I will tell you one thing, and that is, when they don't agree they don't allow them to render a decision. That is one way in which our procedure differs with the jury and the court. I have often thought if we would take a court composed of a number of men and lock them up, give them a little feed and water, and keep them locked up, they would agree and if they wouldn't agree they wouldn't have any decision. I will tell you, my friends, we are getting too many wires crossed in this country in the decisions of our courts. We are having too many decisions made today as the solemn law of the land, and next week or next year they are absolutely wiped away. I realize, and every lawyer does, the difficulties with which our courts have to contend on these problems, and I realize as fully as any one can how absolutely impossible it is at all times to conscientiously adhere to the prior decisions of the court, but I also realize that every time a decision is wiped out by a subsequent one from the same court, we are giving comfort to the men who are constantly crying, "Down with the courts", who are sowing the seeds of discontent in the minds of men with the decisions of the courts they are trying to uproot, and they are trying to shake the confidence of the people in our courts, which are, after all, the last refuge of men against wrong.

Therefore, I feel that we ought to have fewer reversals of prior decisions; and I also feel, sometimes, that the decisions of juries without any reasons given why, and without being able to find any reason why, are better than the decision of a court of last resort in the United States, where four judges on one side write opinions absolutely sustaining certain rights or condemning certain wrongs, while four or five on the other side just as eloquently, and just as forcibly, and upon just as sound authority, write opinions directly to the contrary. I do not know how the matter could be arranged, but I do know this, that every decision which

is rendered in which a court is divided and strong opinions written upon both sides, is again sowing the seeds of discontent and unsettling the confidence of the people in the courts. I therefore believe, and I always have believed, and always will believe, that the jury system, with all its faults, because there are faults in the system, is doing more today to sustain the confidence of the people in the administration of justice than anything else we have in this country, and we all know that in the long ago when a jury of a man's peers was guaranteed by the old Charter, that it came forth as the result of a protest of men against too much law and not enough justice.

In the very nature of things, men trained in the law, whose lives are far removed from the ordinary walks of life, who seldom enter the doors of a factory, or walk along the ties of a railway, or go behind the counter of a bank, or have done anything on the farm, built fences or felled trees, that these men whose lives are taken up with the study of the deep problems of the philosophy of life, that they are not as capable of judging men's acts and drawing from those acts the proper inferences and conclusions as the men who work by their sides, who know their lives and impulses, who feel as they feel, who deal with the problems as they do, who take their acts and ways and measure them and weigh them and draw from them the conclusion that they should draw. The court, acting as a court, is not as well qualified to draw these conclusions and inferences as the man who is called into the jury box.

Now, that is one thought. The other thought I want to suggest tonight, because I am not undertaking a discussion of this matter, is that it is the duty of the bar and the duty of the courts to attempt in some way and in every way we can to educate and elevate the standard of jury trials, and also in doing that to try and impress upon the men who make up the juries of this country the responsibility that they must carry as a part of one of the great branches of this government. In Illinois, the other day, in annulling an indictment, growing out of the recent political scandal, as to the merits of which I know nothing, but in annulling this indictment the reason was given in an interview, that the public clamored—I cannot use his language, but his thought

was that the public clamored for the blood of the guilty man, and that when they came into the jury box you could not get a conviction from them.

Now, that is due to the fact that men do not fully realize that upon their shoulders rests the great responsibility of the enforcement of the criminal laws of the country, and that through them and by them alone can they be enforced, and through them justice can be obtained in many civil cases. In other words, these men have to be made to fully realize that they are a part of our judicial system as much as the judge who sits upon the bench, and upon their shoulders rests the responsibility for the enforcement of law, and that without their conscientious effort and without their determination to assume this responsibility justice cannot be done, and if justice is not done and as justice fails, you know and I know that people will constantly lose their respect for law and confidence in its proper administration.

I have always felt that the numerous lynchings in this country were due to the fact that down in the hearts of men, that the old admonition which Moses recognized, an eye could be taken for an eye and a tooth for a tooth, that men must be allowed, as in the olden days to pursue wrong, and to wreak their private vengeance, or that the law and the courts must impose a punishment in such a way and at such time as will satisfy to some extent the cravings of that vengeance, and it cannot be done unless you make the punishment fit the crime; and I might as well say, that I am in favor of the good old fashioned hanging, and that I am opposed to all of these new fangled ideas of sociologists and tender hearted philanthropists, which eliminate hanging, or some other mode of punishment, for our gravest crimes. I know it is unpleasant to be hung. Some of the States have adopted measures which avoid some of the unpleasant features; in New York they electrocute them. That reminds me of the story of the old Irishman, who shortly after the passage of the law, after a conviction by a jury of an offender, said, "Well, I suppose they'll hang him now." "No," said his friend, "they don't hang them in New York any more." "Well, how do they execute them?" "Oh," he says, "the Legislature at Albany passed a law and they now kill them by elocution."

I will tell you, until we do get further along in the elevation of the ideals of men, we have got to have somewhere a law which for the greatest crimes will furnish a punishment which will sort of quench the fire in the breast of the neighbors of the wronged. It may be harsh; it is harsh, but you cannot, with all your philosophy get out of the hearts of the men that have suffered, whose father or mother has been slain, whose sister has been outraged, you cannot get out of their hearts the yearning for that man's blood. Unless society will punish him, he will seek it himself. Of course, juries make mistakes; so, of course, do the courts, and after all, the ends of the law and the purpose of the courts is that justice shall be done between man and man. We have the responsibility; we have to carry it, whether we will or not. We have to cultivate the tender plant in the hearts of men until they believe that the courts are doing the very best they can, and to do so we have to get into the hearts of men the great truth that with human nature, as it must be with legislatures and the bench, it is impossible that exact justice will always be done, but that we can come as near doing it as possible with human nature as we must deal with it.

THE TOASTMASTER: It is not often that the gentleman who will deliver the Annual Address is with us on our banquet occasions. When he accepted the invitation to deliver the Annual Address, I invited the next speaker to be present at the banquet, and he gracefully accepted. We are glad he is here. Twenty-three years ago, a native Iowa boy, after being admitted to the practice at the bar, left Iowa, and has three times been elected the Chief Executive of that great Empire State of the northwest, North Dakota. I take great pleasure in introducing to you Governor John Burke, who will speak to you upon "The Bench and Bar of North Dakota".

THE BENCH AND BAR OF NORTH DAKOTA

Mr. Toastmaster, and Gentlemen of the Iowa Bar Association: Your toastmaster has at least one of the qualifications which he enumerates as necessary for his position on occasions of this kind, namely: the faculty of making everyone feel at home. Personally I need little encouragement in this respect, for I always feel

at home on Iowa soil or with Iowa people. On one occasion, however, I suffered some little embarrassment on account of my nativity. Shortly after leaving my old home in Iowa to practice my profession in the West, I was called to Fergus Falls, Minnesota, to assist on the defense in a murder trial. Judge Lewis, now of the Supreme Court of Minnesota, was at the time the Prosecuting Attorney of the county of which Fergus Falls is the county seat. Senator Clapp of Minnesota was at that time Attorney General of the State and came up from St. Paul to Fergus Falls to assist in the prosecution. On the morning the case was called I came into the court room and modestly took a seat behind the local attorneys for the defense, and near the end of the counsel table. Presently the County Attorney appeared and with him the Attorney General, whom I had never met, and who sat down behind the Prosecuting Attorney and near the end of the table where I was sitting. The defendant in the case, who was also a stranger to the Attorney General, was sitting back of and a considerable distance from his counsel, and escaped the attention of the Attorney General, whose Argus eyes were fixed intently upon me for some time, and until his curiosity caused him to ask: "Where did you come from to this State?" I proudly replied: "From Iowa." He remarked: "From Iowa!" I said: "Yes, sir, from Iowa." "Well," he said, "this is a remarkable coincidence. Do you know, you are the third man from Iowa to be tried for murder in this county."

To digress a moment. Of the attorneys engaged in the prosecution and defense of that case one is a United States Senator, two became Judges of the Supreme Court of Minnesota, one United States District Attorney for Minnesota and one Governor of a State.

I have looked forward to this meeting with great pleasure, expecting to meet here, as I will, so near the scenes of my boyhood, many of my old friends and schoolmates; boys of the days of "anty over", "two-old-cat", "the spelling school", "the husking bee", "the big red apple", and "the water melon". I knew that it was just at that season of the year when the first invoice of spring chickens was ripening, and that I would be in time to help harvest the first crop. I knew too that my old friend and class-

mate, Judge Wade, would be here to tell again those same dear old stories with which he entertained us in the law school at Iowa City, a little more than a quarter of a century ago. How excruciatingly funny they were then, and how, like good old wine, they have improved with age. The Judge was a good storyteller then, but not nearly so good as he is now. His ease, grace, and eloquence in telling stories this evening proves conclusively the truth of the old adage that "practice makes perfect". By the way, he has one new story. That is, it is comparatively new. It is true that it has been on crutches for several years, but never in the hospital. I refer of course to the story of the convict, which reminds him of my speeches. The convict, who after being sentenced to fifteen years in the penitentiary, was asked by the court if he had anything to say, replied: "No, your Honor, except that you are mighty liberal with other people's time." This is the second time I have heard him tell this story on me, to illustrate or perhaps prevent an interminable speech. It is a good story, a timely story, and with it ringing in my ears as a warning and a plea for mercy I shall exercise clemency and will not keep you here for full fifteen years.

The first time the Judge told this story on me he claimed that the court scene was enacted in Nebraska. Tonight he says Chicago, but on the best authority I can get it happened in Iowa City while he was Judge, and he is too modest to take the credit or claim the benefit. The defendant was mighty lucky that the Judge was not so strong an adherent of capital punishment then as he appears to be now, or he would have been hung sure.

I nearly forgot to apologize for being late this evening. I am always anxious to come early to a banquet and am willing to stay late. Since Mr. Davis' speech explaining the difficulties under which the railroads of this State labor in obeying the law, and since hearing his story about "the man with the hobby", many things in connection with my trip from St. Paul to Oskaloosa, that before were beyond comprehension, now appear clear and plain. I knew that my conveyance was not a "hobby", for I could get off and on whenever I wanted to. I knew it was not a horse, or I would have been here sooner. And after hearing Mr. Davis I now know that I was on a train moving, yes, moving, over a railroad that was obeying the letter of the law.

After the warning and the plea for mercy, so cleverly concealed in Judge Wade's story, I shall take but little of your time in discussing the Bench and Bar of North Dakota.

The young lawyer's first experience with the bench is usually in Justice Court, and his trials there in a new country are often stranger than fiction, and the pleadings are sometimes fearfully and wonderfully made. I remember one complaint in particular against a client of mine whom we will call Richard Roe. Richard's wife left him and went to live with a family in an adjoining county that had been very recently blessed with a visit from the stork. Richard was convinced in his own mind that his wife belonged to him alone, and that he had a legal right to bring her home, the same as he would any other article of personal property belonging to him. He accordingly went after her and when she refused to come voluntarily he tried to bring her by force. A struggle resulted in which both fell on the bed where the mother and infant child were lying. Others then interfered and poor Richard was obliged to leave without his wife. The affair was reported to a country Justice of the Peace who issued a warrant for Richard upon a complaint filled out by the Justice upon a regular blank, and which, with the exception of the names and dates, read as follows, namely: "John Doe, being first duly sworn, complains and charges that on the first day of March, A. D. 1893, at the county of Rolette in the State of North Dakota, Richard Roe did commit the crime of Richard Roe by assault and threatening to kill while lying in her confinement after giving birth to a child against the peace and dignity of the State of North Dakota and contrary to the statutes in such case made and provided."

However, in a new country the laws are largely enforced and justice is largely administered in the Justice Courts; and there many of the Justices of the Peace become very good lawyers, familiar with the rules of evidence and conscientious in the performance of their official duties.

We were fortunate in securing on the first Supreme Court of the State three of our very best lawyers; men of unimpeachable integrity and splendid judicial qualifications, and I believe the high standard then established will be maintained.

We have recently passed a non-partisan judiciary act. The names of the candidates are placed upon the ballot at the primary conventions without political designation. The candidate runs as a lawyer and as a judge of law, and not as a Democrat or a Republican. We believe that this will result in the election of high class men who are not under obligations to any political party and will have no interest in the decision of any case, political or otherwise, other than a desire to be right under the law.

The business of the courts has increased with the growth of the country so rapidly that within the last five years I have had to appoint five new District Judges and three Supreme Court Judges. This fact handicaps me somewhat, for if I say anything in favor of our Judges it may appear to be boasting, and if I say anything against them it may be taken as a reflection upon myself. I sincerely believe, however, that both Bench and Bar in our State will average up with the Bench and Bar of other States. We have not the specialists in our State that you have in your large cities. The trial lawyer in our State is an all-around lawyer. Today he may be defending someone in the District Court of the State on a criminal charge; tomorrow, engaged in the trial of a case affecting the title to real property; and the next day he may be in the Supreme or Federal Courts. It is impossible for him to get into a rut; the general business that he must do broadens him out and makes him a big, all-around lawyer, equal to almost any emergency.

As an illustration of the versatility of the railroad attorney: I remember the trial of one case where a railroad company was sued for damages caused by a fire claimed to have been set by an engine pulling a train of cars belonging to the company. One witness testified that a locomotive engine, such as the one the plaintiff claimed set the fire, would throw fire from the smoke-stack one hundred and fifty feet. This was very damaging testimony against the defendant, and the attorneys for the defense cross-examined at great length to break down or change this testimony, without avail. The next morning the attorney for the defense recalled the witness for further re-cross-examination and said to him: "You testified yesterday that an engine, such as the one claimed to have set the fire in this case, would throw

fire one hundred and fifty feet, did you not?" And the witness answered, "I did." "But," said the attorney, "you meant straight up, did you not; that is, that the engine would throw the fire one hundred and fifty feet straight up in the air?" "Oh yes," said the witness, "of course I meant straight up."

But I shall tell you nothing more about the Bench and Bar of North Dakota. You should know each member of both personally. Come out to our State and we will meet you and greet you with the spirit, the freedom, and the hospitality of the West.

THE TOASTMASTER: The Iowa Bar and the Iowa State Bar Association have been honored by the President, in selecting one of its members as a member of the United States Circuit Court of Appeals. I take pleasure in introducing the able Ex-Congressman, the able ex-member of the Committee on Rules, and the ablest Standpatter of them all, the Hon. Walter I. Smith, of Council Bluffs. His subject is "The Federal Judiciary and the Bar".

THE FEDERAL JUDICIARY AND THE BAR

The subject "The Federal Judiciary and the Bar" was not selected by me but was assigned by your Committee on Program. This is mentioned that it may be made plain that I am not assuming the right to speak for either the Federal Judiciary or the bar. All the Judges of the Federal Court are members of the bar, and it is therefore proper to assume at the outset that Federal Judiciary is used as referring generally to the courts rather than as referring to the persons who preside in the Federal Courts.

The member of the bar is an agent of the law to aid in securing the better administration of public justice, and he who selects the profession as a calling should regard himself as dedicated to that great end. The first great essential is a system such as will result in a correct and just determination in all cases of the law and the facts. No system of jurisprudence could be regarded as ideal which permitted technical rules not only to promote the orderly transaction of business but to defeat that most important of all ends, justice, or which permitted local influences or prejudice to outweigh the very merits of a controversy.

The second great essential in an ideal system of jurisprudence is that justice shall not be unnecessarily burdened by excessive costs and delay. Improvements in the administration of justice should keep pace with the Nation and the world, and it is the duty of every member of the bar whether he is engaged in the practice of his profession or sits upon the bench, Federal or State, to do what in him lies to improve our system of adjudication of public and private rights.

The President has been earnestly urging judicial reform. The last Congress passed an important law to reduce the expense to litigants in the Federal Courts. The Supreme Court of the United States at its last term appointed a committee consisting of the Chief Justice and Justices Lurton and Van Devanter to consider the reformation and revision of the equity rules and in connection therewith the reformation of pleading and practice in equity cases in the Federal Courts. This committee is authorized to consider and report such changes as it may conclude would, if adopted, tend to the simplification of pleading and practice and the correction of any unnecessary delay or unreasonable cost. The Executive, Legislative, and Judicial branches of government are thus all coöperating for the improvement of the Federal Judicial system.

All such efforts should have the support and aid of all right minded men whether lawyers or otherwise, and yet in this as in other commendable reform movements it would be well to remember that it is not wise to become so possessed with the idea that one can swim so much faster than the vessel he is on can sail that it is necessary to jump overboard in order to make time.

The chief functions of a written constitution are—1st. To establish a framework of government; 2nd. To safely protect and well defend all the unalienable rights of man even against majorities. Failure to comprehend this fact has resulted recently in the incorporation into State Constitutions of the most ordinary legislation upon the most everyday subjects, one State having incorporated the details as to the admission of members of the bar in its Constitution. This failure to recognize what properly comes within the scope of a constitution and what within the scope of a statute is vicious and highly dangerous.

If the constitution is to deal with minor matters of mere public policy there is every reason why it should be easily amended to meet changes in that policy. It is a vicious error to assume that freedom is identical with government by changing majorities.

When not swayed by excitement or interest the majority will ordinarily be right and do justice, but it must always be remembered that it is a fundamental principle of our government that every man has certain unalienable rights of which no majority can rightfully deprive him. No majority, however great, has a right to make slaves of even a small minority.

As one of the great purposes of every written constitution is to protect such unalienable rights as that of liberty against temporary majorities swayed by interest or moved by passion, such provision should not be easily amendable by such temporary interest or excited majorities. Those who are guilty of inserting ordinary legislative provisions in constitutions do a great wrong, for they thus lay the foundation for a claim that the provisions of the constitution should be subject to easy change by the people and thus greatly weaken the safeguards of human liberty.

If a constitutional convention abuses its functions and writes a code and calls it a constitution, then manifestly the power of easy amendment must be reserved to the people. It is of the utmost importance to the human race that the two fields of constitutional and statutory provisions should be kept distinctly separate. The difference between a constitution and a statute is fundamental and should be constantly kept in mind, and whenever a constitution goes a step beyond establishing a framework of government and shielding the rights of man it is a vicious thing.

Statutes being with reference to matters as to which the majority have a right to rule should be easily amendable at the pleasure of the people. The constitution as the bulwark of human liberty and unalienable right should never be the subject of the whim or passion of the hour. Those who are responsible for the insertion of ordinary legislation in a constitution thereby create a plausible excuse for making the constitution easily amendable, and so are responsible for the breaking down of the safeguards of human liberty.

De Tocqueville in his "Democracy in America" says—

"I hold it to be an impious and execrable maxim that, politically speaking, the people has a right to do whatever it pleases; and yet I have asserted that all authority originates in the will of the majority. Am I then in contradiction with myself?

"A general law which bears the name of justice, has been made and sanctioned not only by a majority of this or that people, but by a majority of mankind. The rights of every people are consequently confined within the limits of what is just. A nation may be considered in the light of a jury, which is empowered to represent society at large and to apply the great and general law of justice. Ought such a jury, which represents society, to have more power than the society in which the law it applies originates?

"When I refuse to obey an unjust law, I do not contest the right which the majority has of commanding, but I simply appeal from the sovereignty of the people to the sovereignty of mankind. It has been asserted that a people can never entirely outstep the boundaries of justice and of reason in those affairs which are more peculiarly its own; and that, consequently, full power may fearlessly be given to the majority by which it is represented. But this language is that of a slave.

"A majority, taken collectively, may be regarded as a being whose opinions, and most frequently whose interests are opposed to those of another being, which is styled a minority. If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should a majority not be liable to the same reproach? Men are not apt to change their characters by agglamorating; nor does their patience in the presence of obstacles increase with the consciousness of their strength. And for these reasons I can never willingly invest any number of my fellow creatures with that unlimited authority which I should refuse to any one of them.

"I do not think that it is possible to combine several principles in the same government so as at the same time to maintain freedom and really to oppose them to one another. The form of government which is usually termed mixed has always appeared to me to be a mere chimera. Accurately speaking, there is no such thing as a mixed government, with the meaning usually given to that word; because in all communities some one principle of action may be discovered which preponderates over the others. England in the last century—which has been more especially cited as an example of this form of government—was in point of fact an essentially aristocratic state, altho it comprised very powerful elements of democracy; for the laws and customs of the country were such that the aristocracy could not but preponderate in the end, and subject the direction of public affairs to its own will. The error arose from too much attention being paid to the actual struggle that was going on between the nobles and the people, without considering the probable issue of the contest, which was really the important

point. When a community actually has a mixed government—that is to say, when it is equally divided between two adverse principles—it must either pass through a revolution or fall into complete dissolution.

“I am therefore of opinion that some one social power must always be made to predominate over the others; but I think that liberty is endangered when this power finds no obstacle which can retard its course, and force it to moderate its own vehemence.

“Unlimited power is in itself a bad and dangerous thing. Human beings are not competent to exercise it with discretion. God only can be omnipotent, because His wisdom and His justice are always equal to His power. But no power on earth is so worthy of honor for itself that I would consent to admit its uncontrolled and all-predominant authority. When I see that the right and the means of absolute command or of reverential obedience to the right which it represents are conferred on a people or upon a king, upon an aristocracy or a democracy, a monarchy or a republic, I recognize the germ of tyranny; and I journey onward to a land of more hopeful institutions.

“In my opinion, the main evil of the present democratic institutions of the United States does not arise, as is often asserted in Europe, from their weakness, but from their irresistible strength. I am not so much alarmed at the excessive liberty which reigns in that country at the very inadequate securities which exist against tyranny.

“When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority, and implicitly obeys its instructions; if to the executive power, it is appointed by the majority, and is a passive tool in its hands. The public troops consist of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain cases, even the judges are elected by the majority. However iniquitous or absurd the evil of which you complain may be, you must submit to it as well as you can.

“If, on the other hand, a legislative power could be so constituted as to represent the majority without necessarily being the slave of its passions, an executive so as to retain a certain degree of uncontrolled authority, and a judiciary so as to remain independent of the other two powers, a government would be formed which would still be democratic, without incurring any risk of tyranny.

“I do not say that there is a frequent use of tyranny in America at the present day; but I maintain that no sure barrier is established against it, and that the causes which mitigate the government are to be found in the circumstances and the manners of the country more than in its laws.”

You will note he says, “When I refuse to obey an unjust law I do not contest the right which the majority has of commanding but I simply appeal from the sovereignty of the people to the

sovereignty of mankind." The context seems to show that by this he means he appeals from the judgment of one nation or people at a given time to the sense of justice of the world and mankind in every age. God the Father has endowed individuals with certain unalienable rights, some of which are embodied in the Declaration of Independence, and neither a nation nor the world has any rightful authority to deprive him of them.

The Federal Courts are distinctly charged with the enforcement of the Constitution and laws of the United States even as against States and people. They secure litigants against local prejudice and favor, but highest among their duties is the preservation of liberty and right so far as shielded by the Federal Constitution against the wrongs of individuals and even temporary majorities. In them alone is found that protection against tyranny that De Tocqueville thought lacking in our free institutions.

Many honest and misguided men, ignorant of the means whereby human liberty must be safeguarded if it is to be preserved, and many others careless of the effects upon human rights, if they can promote their political welfare, preach in favor of constitutions easily amendable and advocate making judges subject to punishment for sustaining the rights of men.

The bar has for ages furnished the ablest and most numerous advocates of human liberty. The business of a lawyer should make him a student of history, and of the wrongs done liberty in the past, and of those means devised by the wisdom of the ages to protect human rights.

Lawyers by training and tradition are more capable than any equal number of others of appreciating when liberty is in danger and are more solemnly charged than others with responsibility for its defense. They must bear a very heavy measure of responsibility if the safeguards of liberty are broken down and human rights are made in times of excitement subject to the mad malice of the mob.

THE TOASTMASTER: The banquet program is concluded. I am sure you will unite with the Chair in the opinion that it has been an interesting and pleasant evening. I bid you all good night.

FRIDAY FORENOON SESSION

THE PRESIDENT: The Convention will please be in order.

SENATOR C. G. SAUNDERS: Your committee, appointed to draft suitable resolutions to the memory of Charles M. Harl, former President of this Association, pursuant to the directions of the Association, at the September Term of the Supreme Court in the year 1910, presented the resolutions to the Supreme Court, and they were by that Court spread upon the records of its proceedings.

THE PRESIDENT: I will call for the regular order of business, and that is the report of the Committee on Law Reform, Justice Deemer, chairman.

[The following report of the Committee on Law Reform was printed and distributed to members prior to the meeting:—

To the Iowa State Bar Association:

Your Committee on Law Reform make the following report. We recommend for adoption propositions Nos. I, II, III, and IV, and submit for discussion No. V.

I

The Legislature should adopt the following statute:

No judgment shall be set aside or reversed or new trial granted by any court of this State in any case, civil or criminal, on the ground of misdirection of the jury or for the improper admission or rejection of evidence, or for any error as to any rejection of evidence, or for any error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties.

II

This Association recommends the adoption of an employers' liability law and a workingmen's compensation act.

III

We approve the act introduced in the last Legislature at the suggestion of the Law Reform Committee of this Association for the relief of the Supreme Court and especially recommend and urge its adoption by the next General Assembly.

IV

Sec. 3564 of the Code should be repealed and the following enacted as a substitute:

"The defendant or plaintiff may demur to one or more of the several causes of action alleged in the petition or counter claim and answer or reply to the residue. And no pleading shall be held sufficient merely because of failure to demur thereto. But if the petition of the plaintiff or the counter-claim or cross petition of a defendant or defendants do not entitle the party to any relief whatever, or the answer or reply do not constitute any defense to the cause of action, advantage must be taken of the defect by demurrer, and if no demurrer is interposed, by motion in arrest of judgment."

V

For discussion:

Neither insanity nor intoxication should be regarded as a complete defense to any criminal charge, but either may be considered in determining the degree of the offense.

Mr. Carroll Wright of the committee does not concur in proposition No. I, although he thinks the subject matter worthy of discussion.

A further report with reference to a resolution favoring the repeal of the collateral inheritance tax law and to some other matters will be made during the session.

Respectfully submitted,

H. E. DEEMER
CARROLL WRIGHT
M. A. ROBERTS
J. J. CLARK
W. P. BRIGGS
A. N. HOBSON
C. H. VAN LAW]

JUSTICE DEEMER: *Gentlemen of the Association:* The Committee on Law Reform has endeavored to present for your consideration timely and interesting subjects, which we hope will be fruitful of intelligent discussion. Our first report has already been printed and now appears on the regular program, so that I shall not take your time reading it, preferring to call it up section by section later for adoption. We have a supplemental report, part of it responsive to a motion passed during the closing days of our last meeting and referred to this committee, being a resolution respecting the repeal of the collateral inheritance tax law. We also have one other matter which we wished to embody

in the supplemental report, which I shall now read, and which is as follows:

Your Committee on Law Reform makes the following report, supplemental to that already published and distributed to the membership:

1. That Section 3538 of the Code should be amended so as to read as follows:

"Where it is necessary to make an unknown person defendant, the petition shall be sworn to and state the claim of plaintiff with reference to the property involved in the action, that the name and residence of such person is unknown to the plaintiff, and that he has sought diligently to learn the same. The notice thereof shall contain the name of the plaintiff, a description of the property, the claim of the plaintiff thereto, the relief demanded, the name of the court, and the term in which appearance must be made. Such notice must be entitled in the full name of the plaintiff against the unknown claimants of the property and shall be signed by the plaintiff or his attorney."

2. With reference to the resolution recommending the repeal of the collateral inheritance tax law, your committee is unanimously opposed to the adoption of such a resolution, although some of its members favor an amendment to the present law. All are of the opinion, however, that the matter is a proper one for discussion, if the Association has the time and disposition to consider it.

Now, Mr. President, I purpose coming back to the original printed report, taking it up section by section, and asking for the adoption of those matters which we have recommended for adoption.

The first recommendation of your committee has been pending before this Association for a good many years; in fact, while it has been pending, the Congress of the United States has passed just such an act, and so have the States of Wisconsin, Missouri, Washington, New York (as I recollect it); and perhaps some others have also placed themselves on record in favor of just such a resolution. Thoughtful laymen all over the country are discussing the matter, and we have felt that it was time for a conservative Bar Association, interested, as it should be, in all things that tend towards a better administration of justice to take it up. We know, as lawyers, that there are two things

which are most detrimental to the administration of law today. The first is sentimentality on the part of jurors and the people, and the next is technicality on the part of the courts. We might as well face the situation. If we do not do it, the laymen are going to, and we do not know what kind of legislation we shall get as a result. Back of such legislation as this are such men as Justice Brewer, President Taft, Ex-President Roosevelt, Andrew D. White, and I might go on and name a list of the best thinkers in this country who are favoring such legislation. The American Bar Association took this matter up and it recommended for adoption that part of the judicial code which was passed last March by the Congress of the United States, containing this very, identical section which we propose for adoption in Iowa.

Personally I am more concerned about it on account of the technicalities which have grown up with reference to the administration of the criminal laws. I need not refer to the decisions which make us all blush when we think about them; the decision in Missouri, which reversed a case because the word "the" in the concluding part of an indictment, "contrary to the peace and dignity," was omitted, nor in Wisconsin where they failed to require a defendant to plead, and the case after trial, as if there had been a plea, was reversed because no plea had been had. I might mention numerous other decisions of like import. There is this feeling, gentlemen, and we all know it, that there has been a breaking down of the administration of the criminal law in this country. Just recently we have seen a queer parallel between the administration of law in America and in England. Take the Thaw case and put it up in juxtaposition with the Crippen case; and I might go on and point out just such examples as that by the hour. It is time that we clean our stables a little.

This is a sane and temperate resolution, which we believe we should endorse and go with it to the Legislature, not with the idea that everything in law is technical, but that we should get rid of some of the technicalities which do not go to the merits of a controversy at all. We are prone to get too technical—refining too much. We are like the eloquent Burke, we keep refining while everybody else is thinking of dining.

Without saying more this hot morning, I am very anxious that this Association, after having twice passed over this resolution, should adopt it. While we have been quiescent, Congress has taken it up and passed it. Iowa should not be behind with reference to the matter.

I move the adoption of this first recommendation.

JUDGE W. G. CLEMENTS: This recommendation recites, "No judgment shall be set aside". What may we understand by the term "misdirection of the jury"?

JUSTICE DEEMER: It means faulty instructions.

THE PRESIDENT: Just a preliminary word. This program is so arranged, and designedly so, to give you ample time for discussion. The President has been under the impression that in past years we have limited the time of oral discussion too much. I want the members to be perfectly free in entering into the discussion.

It has been moved that the first recommendation of the Committee on Law Reform be adopted. The motion is duly seconded.

JAMES O. CROSBY: I think it was Blackstone that said, when we would consider a change in the law, we should first consider what the law is; secondly, the mischief resulting from the law as it is, and the proposed remedy. We have in our Code a section which provides substantially everything that is in this first proposition. I have compared the two. I do not see wherein this differs. Of course, the trouble has been that it was placed in an odd place in the Code, over in among the pleadings somewhere. This would, of course, bring it out and put it in a plainer place, where the court of last resort could find it.

J. L. PARRISH: I do not know anything about the criminal law. There may be some occasion to pass some statute to remedy some mistakes which courts of last resort have made with respect to that branch of the practice, but it occurs to me there is no occasion to pass the proposed act to remedy any difficulty which has grown out of the administration of the civil law on this subject.

I think there is a distinction between the statute Mr. Crosby refers to and the one now proposed, and it is just this distinction

that makes in my opinion the proposed statute a very dangerous one.

Section 3601 reads as follows:

"ERRORS DISREGARDED. The court, in every stage of an action, must disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect."

Section 3754 reads:

"MUST BE ON MATERIAL POINT. No exception shall be regarded in the Supreme Court unless the ruling has been on a material point, and the effect thereof prejudicial to the rights of the party excepting."

Now, as I understand the rule adopted by the Supreme Court, and I have had occasion to consider it a good many times—it is, where error appears, either in the admission of testimony or the direction of the jury, prejudice is presumed, but such error is disregarded if it appears from the record that it was without prejudice. I think our Supreme Court has been sufficiently liberal in the construction of this statute and in holding in a very large percentage of the cases that the error was not prejudicial. It does not occur to me that it is necessary to pass any act by which they will have an excuse to make a rule more liberal in the way of affirming cases.

Now, this proposed act says, and I am reading what seems to me the material part:

"No judgment shall be set aside or reversed or new trial granted by any court in this State . . . on the ground of misdirection of the jury, or for the improper admission or rejection of evidence, or for any error as to any method of procedure, unless in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties."

Under the proposed statute it will be impossible to get into your record, or show by your record affirmatively that prejudice has resulted from an error. There is no way of doing that. You cannot show that the jury, for instance, considered testimony that was not competent or was not material. There is no way of showing that the jury was influenced by error in the instructions, and therefore because you couldn't show that in your record,

error is presumed. That is, as I understand it, the basis for that rule.

Now, the difficulty about this proposed statute is, as I consider it, that it will be necessary, after this act is passed, to show prejudice affirmatively by your record, otherwise the misdirection of the jury, or the admission of improper testimony will be presumed to be error without prejudice. Of course, I do not know what the author of this proposed statute has in mind, and I have less of an idea what the Supreme Court will say it means, after it is passed. It occurs to me, it is susceptible of either one or two constructions; either the one I have suggested, that it was necessary for the appellant to show prejudice affirmatively by the record, or else that it will be the duty of the court to examine all the evidence and determine for itself whether or not the verdict on the evidence was right and one that the court would render under the circumstances. In other words, casting upon the court the duty of usurping the functions of the jury in determining the case in the Supreme Court. Now, either one or the other of these constructions, it seems to me, must be put upon this. So that it seems to me, it is objectionable for both reasons: first, that it will be impossible to show error or prejudice affirmatively, and secondly, we do not want to cast on the Supreme Court the burden of acting as a jury.

Now, what we are entitled to in the trial of a jury case, whether criminal or civil, is a verdict of the jury, not the judgment of the court on the facts, but the verdict of the jury on the facts, and we are entitled to that, whether we are the plaintiff or defendant. We are entitled to the judgment of the jury on the facts which are material and competent and relevant to the issue, and we are entitled to the verdict of the jury based upon the law correctly laid down by the court, and if we have not had the judgment of the jury under these conditions, we haven't had a fair trial; we haven't had that day in court to which we are entitled.

I was present at the last Bar meeting at which this matter came up, when it was postponed to this meeting. I remember it was suggested by the chairman of the committee, that you could trust the jury to determine whether or not the evidence

which has been introduced was competent or material. I have had some little experience in the trial of jury cases, and I have had occasion, out of curiosity, to find out what the reason for the verdict was, sometimes when the verdict was in favor of my client and sometimes when it was against him, and often times I have discovered that the verdict was based upon evidence, something that went in, that really had no important bearing on the case. When a court has already said that evidence is competent, material, and relevant, you cannot trust the jury to try that question over again. When the court has said that a certain line of testimony was proper and admitted it, the jury not only have the right, but it is their duty to consider it. And so I say, we know from experience that the verdict of the jury is as liable to be based upon evidence which has no business in the case at all, as upon evidence that is competent or material, and there is no way of showing in the record whether the admission of the evidence was prejudicial or not. To illustrate: I tried a jury case up in Pocahontas County, before Judge Bailey. When I got through with the evidence, the court told me how it was going to instruct the jury. I sat down and waited until the attorney for the plaintiff had made the opening argument, and then I waived my argument and went home, because I felt satisfied that the jury under the instructions of the court, which I thought were wrong, would have to bring in a verdict for the plaintiff. I would have had to do so myself if I had been on the jury. But fortunately for me, they took another view of the case and brought in a verdict for the railroad company. If I had argued that case, there would have been a verdict for the plaintiff, because I would have adopted an entirely different theory.

Now, if this statute means, as I understand it, that you must show prejudice affirmatively, you might just as well abandon jury cases, because you cannot do that. If it means that the Supreme Court is going to usurp the functions of the jury in determining whether or not the verdict was a just one, I for one do not want it, because, notwithstanding the respect I have for the members of the Supreme Court, and the judges of the District Court in this State; notwithstanding the fact that I do not do anything but defend a railroad company, I would prefer every

time the verdict of a jury upon the facts in the case. I can get better results from a good, honest jury of twelve men than any judge I ever saw anywhere. I am willing to trust my facts to the jury, if I can get evidence that is competent and material, and the law properly laid down.

JUDGE M. J. WADE: There is one view of this resolution which I think has been overlooked by the gentleman who has just spoken. We all realize the importance of doing something along this line, or to at least have it go out from this Association that it has done or attempted to do something to satisfy the demands of the people that there shall be less cases disposed of upon what we call technical rules. We have had this under discussion for some years and, of course, our failure to act in this matter is a practical admission on our part that we will not do anything along this line.

Now, we must do something along this line or the results are going to be disastrous. There is no use talking, we cannot shut our eyes to the fact that the people are losing confidence in the law and in the courts. I call to mind that a few weeks ago I was trying a case in a city in this State, where there was a strike. Along about ten or eleven o'clock at night, a large body of people assembled at a certain place and were trying to reach men who were strike breakers or were claimed to have been strike breakers, and they assaulted them and hurled stones through the windows. It was a very serious situation. There were old men there; there were young men there; there were old women there, sixty or seventy years old, standing around in that mob. There were young girls there, twelve and thirteen years of age. Some of us went there and plead with these men to wait and let the law take its course, and uniformly the reply was: "To hell with the law; what is the law? what does it do?" It was a picture of absolute anarchy. I think in one or two cities in this State, at the last spring election, there was a majority vote, at least in some of the wards, for the socialist candidates, and yet perhaps ninety-nine men, perhaps not that number, but at least eighty men out of a hundred who voted for the socialist ticket were not socialists. They do not believe in the principles of socialism, but they voted

for the socialist candidate as a protest against the other parties and the methods which exist.

So we might as well recognize the fact that something ought to be done. There are rules of law which tie the hands of courts now which are not necessary for the administration of justice. I recall, if I am not mistaken, that the statute is still in force in this State by which a man may be indicted for horse stealing and come in and make his plea of not guilty and be tried for the crime—the evidence all offered and the jury properly instructed, find the man guilty, and then you can come in at that stage of the case and file a motion in arrest of judgment, because there was some technical or substantial defect in the indictment. Anything of that kind is absolutely without excuse. Any man who will come into court, represented by counsel, have an indictment read, and make his plea and try the case, ought to be held to accept the form of the indictment, unless he demurs at the proper time. When that proceeding has gone through and the excitement of the neighborhood has spent its force, and the trial is ended and the feeling satisfied that a just verdict has been rendered, I want to say, that the court who sits upon the bench and is required, as he is now, to say the next day, "I will have to set aside this verdict and will have to re-try this man again," I say, such a proceeding is a dangerous one to every one of us.

Now, the discussion has proceeded upon the theory that this proposed resolution is only for the guidance of the Supreme Court. As I read it, it is binding upon every court. As the law now is—and I think we have probably as high and intelligent a class of men upon the bench of the State as in any State in the Union—we all know from personal experience, that at some time or other the District Court will get a notion in his head, after the case is tried, that the verdict ought to be set aside. Under the present law he is the master of the situation. Under the decisions of the Supreme Court, he may set aside, for cause or without cause, at his absolute discretion, and the Supreme Court has almost uniformly said, except in one or two cases, that there is vested in the lower court a discretion which they cannot interfere with. This statute says: "No judgment shall be set aside or reversed or new trial granted by any court of this State, in

any case," etc. This applies not only to the presentation of the case upon appeal to the Supreme Court, but it also guides the lower court and places a restraint upon him, so that his judgment or lack of judgment or mistake, may be reviewed by the Supreme Court, and they can say whether or not a man who has spent perhaps more than he is getting, through a five or six days' trial, must again begin at the beginning and go through the same process over again.

So I believe something ought to be done, and that this presents the matter in as good a shape as it can be presented. In every statute which we pass along these lines, you have to trust the Supreme Court for a sane and sensible application of the rule; and when counsel talk about placing the Supreme Court in the jury box, or permitting the Supreme Court to assume the place of the jury, of course, I wouldn't for a moment consider a proposition which would lead to that result. But I do not so consider this proposed amendment or statute. I do not consider that under this rule the Court would really pass upon the facts, or that the Court would review the facts to determine whether or not because of the error assigned, discussed, and presented to the Court, there was any prejudice. In other words, it will bring about simply a reversal of the present rule. As it stands now, it is presumed it was error, and in some way you have got to point out and satisfy the Court there was no error. I recognize the fact that we have to assume in the consideration of a case that a jury has some common sense and judgment. In other words we know of many cases now where no man, no ten or twelve lawyers or laymen, could take up the record and read it through, could not be satisfied that a certain statement which was admitted could not in the remotest degree have any bearing upon that case. Of course, we cannot in these cases absolutely reach a definite analysis; we get to it the best we can in a practical way.

So, I say, I am in favor of this rule, particularly because it places a restraint upon the action of the District Courts in setting aside verdicts which have been rendered after a trial of days and weeks, unless there is a substantial reason for it. I would go at the same time farther and advocate the adoption of a rule, that whenever the District Court does set aside a verdict

and give a new trial, that in all these cases the lower court must file, whether he affirms or rejects, a written opinion, as they do in Pennsylvania, so that the Supreme Court may see what the lower court decided and why; so that the counsel may show to the court on appeal what the lower court did decide. Therefore I am in favor of the adoption of this rule and its application to the lower and higher courts. There ought to be a good and substantial reason for setting aside a verdict or judgment of a court which has been properly organized and a substantially fair trial had.

JUDGE W. G. CLEMENTS: As I understand the reading of this proposition, it seems to me we are dead wrong. As I understand the proposition, in the trial of a criminal case, if the court through inadvertence or anything else should direct the jury they might find the defendant guilty by a *preponderance* of the evidence, that on a motion for a new trial the court could say, there has been no prejudice and the evidence shows that he is guilty, thus allowing the judge to pass upon the law and the facts. Or suppose that the court should direct the jury that the burden rests upon the defendant to show that he was acting in self-defense on a charge of murder, and the court, after reviewing all the evidence, on a motion for a new trial, comes to the conclusion the fellow is guilty, and therefore no prejudice has existed. I hope that this Association will not commit itself to a doctrine—especially as long as we have well-defined rules, which have been passed upon time and again in this State—which will put us all at sea when it comes to the practice of law.

MAJOR JOHN F. LACEY: I always listen with great pleasure to my friend, Judge Wade. He is a man in the habit of getting his verdicts and does not like to have them disturbed. Now, if the court is required to find, no difference how grave the error was in a given case, that is committed by the court, that that error was prejudicial, and the presumption is that it wasn't, we have an entire reversal of our theory of the trial of cases; and the Judge's suggestion that because a mob of old women and young women and old men and young men were saying "To hell with the law" is a reason lawyers should set up the cry,

otherwise the mob might get ahead of us and make it worse than we would decide to make it—as for me, I say, “To hell with the mob!”

Let me illustrate what I think the proposed plan will lead to. We enter into the trial of a case, and the court starts out with an absolutely erroneous theory of the law, and he allows the evidence to run for two days along certain lines, and then concludes, and rightly concludes, that he was wrong, and he turns to the jury, and says: “Gentlemen, the evidence taken the last two days is withdrawn from your consideration”; the jury goes out, it is withdrawn, but they decide the case on it all the same. We have all been through that sort of an experience, perhaps not so aggravated as I suggest, but we know error without prejudice is error that is committed when prejudicial evidence is admitted and afterwards withdrawn, and it is very much like withdrawing a red hot poker from your leg, but there is a scar there.

Now, the proposition is, that in the Supreme Court error will be presumed not to hurt—the poker has been withdrawn—there is to be no scar there; it is error without prejudice, and that very error must be shown to have hurt somebody before the courts can interfere. We are losing sight of the real trouble. Error ought to be presumed to be prejudicial and yet, in view of the whole case, it appears not and a new trial ought not to be granted. Under the rules we have now, errors that do not affect the substantial rights of the parties may be disregarded. The real trouble in Iowa is this: we have adopted the rule of having written instructions, so that counsel can go to their office after the case is decided and parse them and study them and seek for error and come in with postmortem ideas and get a new trial. Another still worse feature is, that we have a short hand reporter sit down and take everything that is said. The court says, every ruling I make is to be deemed excepted to. Then you have a transcript made out to present to the Supreme Court, a hodge-podge in which error may be found, and which did not strike anybody at the time; it had to be dug up out of the transcript, and we have made it so easy to present error in the appellate court that we are now shocked at the effects of it. The remedy ought to be different. We ought to require that a question that

is going to be raised in the Supreme Court should be squarely presented.

I think the last suggestion Judge Wade made, that the District Judges should be made to say why, is a much better remedy than the idea that error shall be presumed to be innocent. What is the court for? To decide a case right; to give to the jury the correct law. Now little errors committed that are clearly unprejudicial today, will not reverse a case; but to say no difference how big an error is in the case, that the case shall not be reversed unless the appellate court shall determine, in the light of the whole case, that the man below who has appealed it did not get substantial justice, is to reverse the entire practice in Iowa. We had better adopt the rules of the Federal Court as to making exceptions and give the court a chance to rule upon it, and taking nothing to the appellate court except what the court below decided.

Of course, we cannot satisfy all the people. We don't want to. Somebody will always criticise the law. No one ever felt the halter draw with a good notion of the law. The Judge's client or mine who is acquitted usually goes hence without a day and is left to God's future mercy. I have a case in mind, in this court, in which the defendant, an alleged murderer, whom I felt was innocent, was acquitted, and a mob of nice old ladies and young ladies and the best citizens of the city took him down to the school house, gave him a fair and impartial trial, put him on a sled, took him out to the scene and hung him. Now, that may be held up as a reason why we should amend the law. The men that helped to commit the murder—hang the man—were well known, but we never could get a grand jury to indict them. Public sentiment was against this man and he was a bad man. There was one thing they all rejoiced in, that he was dead after it was over.

But it seems to me, the Bar Association is the last association that should get stampeded with the cry that a mob will not approve of what we do in the matter of radical changes of the laws of Iowa.

JUDGE J. J. CLARK: I think we ought to look at this matter calmly. I gave my reason, as one of the members of this com-

mittee, as to the adoption of this resolution, because I thought that proper reforms ought to come from the bar rather than from the mob, knowing, as Judge Wade suggested, they would come ultimately from the people or laymen, if they did not come from the bar. I think that the President of the United States, and the Ex-President of the United States, and some of the gentlemen whom Justice Deemer has mentioned, are not members of the mob, and are not members of a radical class who would revolutionize society but who really are in favor of advanced thoughts and methods in use in science and in every other department of life. The ministry and the law are about the slowest to reform. You can hardly change a man's religion; iniquity is what he stands on. When a man makes up his mind that he knows what God's eternal laws are, you can't change him until you change God. I do not think we are beyond reform as a legal fraternity. I do not think any rule of practice or rule of law is so well tried by experience, that it would not be justifiable to look into it and reform it, if possible. All that any man is entitled to is one fair trial before a fair-minded jury. If he can get a trial of his substantial rights before a fair-minded jury once, he ought to be satisfied. That is the object of the law, to get at the real merits of the case. There is a tendency among the bar and lawyers to feel that they must have properly tried every right and principle involved, and having only recently emerged from the trial of cases to the other view of things, I feel that I have somewhat of an unprejudiced view, although I may have that same sort of self-interest that the lower courts may have in being reversed. I do not object to being reversed whenever I have committed a real error. If a judge of the lower court has committed a serious blunder and a man's rights are prejudiced, he ought not to object to being reversed.

But this is a mild resolution. Judge Wade has well said that it only changes the rule that error is presumed, after every opportunity has been given a man to present every witness and every phase of the case that he properly can. This does not say that for every blunder a judge has committed the court shall have the right to refuse a new trial. The members who have discussed this seem to go upon the theory that this is intended that

the Supreme Court or the lower court shall correct it, whatever the mistake, however great. Referring to the criminal case in respect to the "preponderance" of the evidence, would any Supreme Court say that wouldn't prejudice the substantial rights of the defendant? It is an imputation on the wisdom of the lower or higher court to say, after such a blunder as that, it would not be corrected. It is simply put up to the Supreme Court to say whether the jury was influenced by that mistake of the lower court. That misdirection that the lower court has given, would it have influenced the lower court himself if he had sat there and tried that case upon that evidence? Would it have made any difference, in all probability, with the jury if that mistake had not been committed?

Here is a case of cumulative evidence. Beforehand the court can, if he chooses, on any point limit the number of witnesses. But supposing he forgets to limit the number, and they have had seven witnesses, and the eighth witness comes on the stand, and he is asked a proper question and the objection is sustained to it, and it is material evidence—seven other witnesses having testified on the same point, ought not the lower court to have power to say, and should not the Supreme Court say, that wouldn't have made any difference in the verdict; the evidence is amply sufficient and the parties have had a fair trial? Are you lawyers and judges going to be so foolish and so technical, when the reason of every common man says that that man has been tried and found guilty, as to say he must have a new trial, when half the witnesses are dead, and others are beyond the scene, and there is no chance of giving the case proper consideration, and the law shall have lost its whole object to protect society? The sword cuts both ways. Let these gentlemen who are in the habit of defending men for crimes not forget that this is a two-edged sword; that it is just as likely to preserve their rights as it is to destroy them. The case goes before a court of last resort, and that court is to give the case fair consideration and its best judgment. We ought to respect its judgment and not so bind it with rules of law that it cannot administer justice, even when in its deepest conviction it knows one just trial has been had and justice has been administered between man and man. It seems to me we must, as

an Association, as a legal profession, both bench and bar, get to the thought that we must get out of the ruts we have been running in and not become antiquated, and be ready for all reasonable reform, and not sit back and fall in when we have to. How are we going to show prejudice in the record. The record itself will show it. The Supreme Court looks it all over and it says, after looking over the whole record, whether that error is sufficient to have made any difference in the verdict.

J. H. McCONLOGUE: I am opposed to this amendment and base it upon a knowledge of history and government—that the apostles of liberty were always technical. Thomas Jefferson was the most technical man of his day. Abraham Lincoln was a technical man. They were technical in the preservation of the individual rights of the citizen. The danger that confronts us today is the belief of the people that we are gradually taking away from them their rights and centralizing authority; that we are placing in the hands of the courts the adjudication and adjustment of individual rights that belong to the people and their representatives, which is the jury.

I am not willing to take the statement of an Ex-President who pronounced words against the judiciary of this country that were unworthy of even the mob. I am not willing to take the statement of a public man who charges that the President of the United States was packing the present Supreme Court in order to get a decision upon the great cases that have been recently tried. Right is right, and justice is justice. There is no change in it; it is right today and it will be right during all the years to come.

The jury, in my opinion, was selected to preserve the rights of the individual. If you take that way from the jury and place it with the court, you are depriving the American citizen of the greatest right that he enjoys under the Constitution. Comparison has been made of the Thaw and Crippen cases. Poor Thaw, he is suffering more than Crippen can possibly suffer, wherever he is, and I am here to say our court was right in preserving the life of Thaw, and I am not so sure of the course of procedure in the Crippen case.

It was the throwing over of right that made the French Revo-

lution possible; it was because of the centralizing of power and the taking away from the people their rights that has made all revolutions possible. As you study the philosophy of history and study the growth of government, you can reach no other conclusion than that the safety of our institutions rests in the fact that a man when he is brought into a tribunal of justice must be most sacredly guarded in all the rights given him by the Creator and the government under which he lives. It is not incumbent upon the defendant to furnish proof against himself; it is not incumbent upon the defendant to inform the prosecutors that they have not demanded of him the statement as to whether he was guilty or not. The defendant is to be fairly, honestly, and fearlessly defended and protected in his rights.

Take the great Plunket case—a man taken from his native home, the home of the ancestors of Judge Wade and myself, and tried in England by a jury of his peers. In view of the whole record they trampled at that time upon the rights of the people. Yet, it is said, he had a fair trial, and he answered with his life. Don't tell me, who has studied the history of England and her dependencies, and the growth of her government and laws, that you are doing your duty when you are listening to the cry of the mob. It is the cry of justice, the Goddess of Truth, that should guide us, and not a clamoring mob outside. We ought to be too big in our comprehension of human rights to say that the people are demanding a change in the individual rights of the citizen; we, as lawyers are too big in our comprehension of human rights to say that they should be frittered away by the cry of the mob.

At this time the Nominating Committee made its report as follows:

REPORT OF THE NOMINATING COMMITTEE

For President, C. G. Saunders, Council Bluffs.

Vice President, H. E. Deemer, Red Oak.

Secretary, H. C. Horack, Iowa City.

Treasurer, Frank T. Nash, Oskaloosa.

Librarian, A. J. Small, Des Moines.

Upon motion duly made the Secretary was instructed to cast

the ballot of the Association for the respective nominees, which was accordingly done.

THE PRESIDENT: We will proceed with the discussion of the first recommendation of the Committee on Law Reform.

JUSTICE EMLIN MCCLAIN: I was in no hurry to get into this discussion, for the reason that I haven't any very strong pre-disposition one way or the other on this recommendation. I do not know that I shall vote for it or against it. That is not, as it seems to me, the important thing just now. It occurs to me, the important thing just now is, if we reach a conclusion, which I hope we may reach after so long a pendency of this proposition, that we shall reach it as a result of a rather independent conception of what is involved in the proposed reform.

Let me suggest to begin with, that I am not at all agitated or excited about the necessity for reform. I think it is well to reform, if there is any reform needed; I have no anxiety about going through the motions of reform, if there isn't any needed, even if the reform is from some point of view desirable. Nevertheless, if on the whole it is of doubtful utility, my bent of mind is to let it alone. Experiments are often dangerous. I think in our whole public system we are more in danger of losing what has been achieved by long and careful building up, than we are in danger of losing some blessing we did not quite estimate, but think it is just beyond our reach.

The difficulties that occur to me, or rather the things that ought to be considered, are perhaps two. One is, that it changes the relation of the court and jury to the trial of a case. I am no great stickler for jury trials; we may be just as well off without a jury, but I know this Association does not intend to abolish jury trials. It may be that we would be better off if the judge exercised a larger function in determining the result of a case. That I do not care to discuss now. But that has not been the spirit of our judicial system in this State. I do not understand it is intended now to give knowingly to the judge or the appellate court a larger function in determining the results of a case than it now has.

So that we come down to this proposition: that the relation of

the court and the jury to the case is to be essentially modified by this change. It will not do to say, as some have said here: "Oh, well, it just gives the Supreme Court an opportunity to ignore errors that were evidently not prejudicial." It doesn't mean that; that is the law now. Don't misunderstand me. I know perfectly well, we can stand up here on two sides of that question, or rather you can; I am not standing on either side of it. On each side of the question you can cite illustrations by the hour; of cases not only where technicality has defeated justice, but on the other hand, where the court has over-ridden the functions of the jury and attempted to decide the case. We have got to be a little broader than that, because you cannot catalog illustrations, nor prove anything one way or the other by the results in particular cases.

Let me say a word here about the criminal law. Most of the objections made by the current literature of the country, and by the men who are condemning the laxity of the courts in the administration of the criminal law, do not apply to this State. The other day I heard a discussion about reforms in law. The gentlemen were talking about things absolutely foreign to us. They were talking about difficulties they were settling by the Code of 1881, and I object to having our judicial system put down as an illustration by what may have been done in Illinois, New York, or Missouri. I do not think those illustrations are fair. I do not think that is the situation with respect to the administration of the criminal law in Iowa.

I think we ought not in this discussion to concern ourselves too much about personal damage suits or personal injury cases. I think we are apt to overemphasize any particular line of cases, as though our adoption or rejection of this radical provision was to be determined by how it would affect some particular class of cases. No one class of cases is large enough to dictate the whole policy of our system. So let us leave out these illustrations and take the classes of cases out of consideration. If we want to make reforms in the criminal law, let us make them, and the one Judge Wade suggested here is so manifestly a just one, from my point of view, that I cannot see why our Bar Association has not adopted it years ago.

The first proposition I want to suggest, is that the relations of the jury and the court must inevitably be changed by this proposed measure. Let us confine ourselves to the trial judge, as this is applicable to the trial of cases, as well as cases on appeal. Suppose the trial judge has erroneously admitted evidence and he becomes convinced of that. Now, it would take a long time to convince me that he can do anything in that case, to preserve to the defendant the right of trial by jury, except to grant a new trial. I can imagine that it is possible he might say, that the evidence was so very immaterial anyway, and the objection to it so very technical, that it couldn't add anything to the result of the case. But this is not confined to that kind of a case; it applies to all cases. It puts on the trial judge the burden of making up his mind as a substitute for the jury, whether the jury would have reached the same conclusion if that evidence had not been admitted; and vice versa, if he rejects the evidence, he has determined what the effect to the jury would have been of that evidence if it had been admitted. As to the instructions, he would have to be advised whether the jury would have taken the same view of the evidence, had the error not been committed, a thing which I fear is difficult to do.

Now, to apply it to the appellate court, I see no constitutional difficulty, but I do see a practical difficulty. Of course, the right of appeal can be entirely denied or limited, and no party in the case can complain on constitutional grounds. But when you come to apply it in the appellate court, you reach another difficulty which is still more serious, to my mind, unless you entirely want to change the functions of the appellate court and change the nature of its procedure, and that is this: the practice now is sanctioned by statute—perhaps by statute in fact, and sanctioned by long usage—that the man who complains of an error, presents only so much in the record as is necessary to enable him to determine whether there was error or not, and so much of the evidence to show that the instruction was erroneous, as applicable to the error; so much of the record to show that the evidence rejected was material to some issue in the case, either of law or fact. So you have a practice well established in accordance with the judicial basis, as it has been administered in

this State for a long time, by which the appellant does not and ought not to put into his record any more of the case than is necessary to enable the court to pass upon questions of law presented by the appellant. He stops there, and it is extremely convenient that he should stop there in the administration of the business of the trial and presentation of cases.

Now, I cannot help but think this change proposed here changes the whole rule, because the appellant comes up with his record and says, here was error, and presents the evidence showing it was error, and the court finds it to be so; and then according to this proposition, the court proceeds to say whether under the whole record in the case—and now by the whole record is meant something else, is meant the whole trial of that case, the whole case as it went to the jury, and as it was before the trial judge,—now then, by this proposition the Supreme Court is required to determine whether under the whole record, as it was tried by the jury in the lower court, that error was prejudicial.

JAMES O. CROSBY: Could not that be done under the statute as it is—Section 3601?

JUSTICE McCLAIN: I think not. Section 3601 evidently does not contemplate a review of the whole procedure of the lower court. What I am contending for here is that this proposition radically changes the method of practice. I do not care whether the practice might have been this way or not.

MR. CROSBY: Then isn't that to save the Supreme Court the difficulty of reversing?

JUSTICE McCLAIN: I won't deny that will be so. I will simply say that has not been the practice of the attorneys or courts, to attempt to review the whole procedure of the trial court for the purpose of determining whether the error is prejudicial or not.

Now, the result is, that every appellant coming into the Supreme Court with a contention of error, will be absolutely obliged to present to the Supreme Court every consideration which could have justified the jury and the judge in the lower court in reaching the same conclusion, had no such error been committed. That is a radical change in the method of practice in this State. It is one which I think is fraught with serious

difficulty, not only to the lawyers in trying to get into the record everything which the jury and lower judge could have considered; but it is fraught with the greater difficulty imposed on the appellate court, of substituting itself for the jury and the lower court with reference to the bearing in that court the particular ruling had.

Just one consideration further: One of the arguments for jury trials,—and I have always thought it a potent argument—is that it relieves the court itself. Our whole system of government is built up on the theory of great respect for the court, and we have achieved it in a wonderful degree in this country. Notwithstanding what my friend Wade suggested, I think the great body of the people are not dissatisfied with the workings of our judicial system. I strongly dissent from any such assumption. From the time of Jack Cade down to the present time, there have been mobs; but it has not prevented the law from continuing to grow and to be administered, and to have the respect of the public generally. I am inclined to think, when it comes to making comparisons—and I see some of the members of the Legislature here, and I address my remarks to them—that the decisions of the court are treated with more deference, and their proceedings regarded with more dignity, propriety, and worth than the proceedings of the Legislature.

One of the great advantages of the jury trial is that it removes from the judge and the appellate court the problem that always attaches, more or less, one way or another, to the results of judicial trials, and the abuse of the jury in a particular case does not undermine our system of government. The jury takes that responsibility, if we should once in a while have a bad jury, we are content to know we will not have them very long. So I think it is a safeguard to the court that it is relieved from the obligation of deciding important questions of fact. I would still like to see the courts free from that difficulty; but if this change is made, I cannot see how they can avoid that responsibility. I cannot see how they can avoid reviewing the whole trial of the case. The appellant must present the whole case, everything that he relied on, and the court must review it—and you lawyers are always solicitous about having every proposition in your

brief, that I do not see how a judge of the Supreme Court, writing an opinion, can avoid writing about the whole case and everything that had any bearing on the final result in the lower court.

The last suggestion is, that this will impose a burden on the appellate court which no appellate court in this country, as now constituted, can possibly faithfully discharge. It is not a question of a few cases, but it is a question of an independent and different kind of investigation than that which it now makes, one which I fear it is not competent to make, because it has only a printed record, and I am sure it is one it will find very onerous in the discharge of its functions.

Now, if the Legislature thinks it can so enlarge the Supreme Court that it can discharge such functions, it will not appeal to me as in any way constitutionally wrong to do so; but I question the expediency of any such change under our present method. I wonder if we will get such an improvement in the size of the court and in the method of presenting cases, that we can impose upon the appellate courts that additional burden.

Now, if the reform is so desirable that a majority of this Association is in favor of it, I am not opposed to it. I am rather presenting these facts for the purpose of getting an intelligent consideration of the question, so that when you will get your reform, it will actually work.

JUDGE W. R. LEWIS: I just want to say that I am opposed to the proposition which is under discussion. I want the rule to remain as nearly as I understand the present statute provides, and let justice be enforced without any change as contained in this proposition No. I. I have made my argument every year it has been presented, and I do not intend to take up any time now, and I do not want to make any mistake about it. I want to be recorded as against the proposition; I shall vote against it.

F. F. DAWLEY: It seems to me the sole question is, not whether the people think there is a defect in the law and practice which ought to be remedied, but whether there is one, in our judgment, before we pass upon this question.

Referring to the situation as to the trial courts, I want to refer to the statute granting new trials, which, as I remember, pro-

vides that the trial judge shall grant, or may grant, a new trial for error occurring at the trial which has affected the substantial rights of the defeated party. Now, the trial judge has all the power and all the authority necessary for him to have, so far as the lower court is concerned, to correct errors. If he does not do it, it is his fault. I think we all of us appear just as frequently in the Supreme Court for the appellant as we do for the appellee. This proposed change—and I do not mean that it was intended as such—will operate as a law for the protection and benefit of appellees. The Supreme Court has time and again said, and they said it before the Fortieth Iowa, in the Dewey case and the Johnson case, and later cases, that the trial courts did not exercise their full function and powers to the extent that they should, when their superior judgment shows that the jury committed error, and I believe the District Judges will agree with me when I say they know of more unjust verdicts that have been allowed to stand with error in the record, than they know of just verdicts that have been set aside on technicalities. The proposed change then will really have no effect on the trial courts, because they have that power already.

With respect to requiring the trial judge to say upon what particular point he grants a new trial, so that the appellant may have his remedy, if it has been upon a question of law, I may say, that it may be that a lawyer who has spent thirty years at the trial table looks at questions with a more partial view than such men like President Taft and Judge Brewer, who have spent their lives upon the bench; but in my experience I have known of District Judges granting new trials upon purely questions of law, and when asked by the party who had obtained the verdict to make a record showing that his ruling is based upon such facts, will say, we will just enter a general order sustaining the motion. So I think Judge Wade's suggestion would be a good one in that respect. There might be another suggestion—I do not know whether it is at all practical—that the trial judges be required or authorized to submit their proposed charge to the attorneys for both sides before it is read to the jury, so that these purely errors of oversight would not occur, and that the practice might conform more nearly to that of the Federal Court. I

think there should be greater liberty on the part of the trial judge in dealing with the jury in respect to the evidence in the case. They often need some light the court could give them and they go wrong because they do not get it. In the Federal Court, the trial judge may comment on the evidence, provided he couples it with the statement: "nevertheless, gentlemen, you are the judges of the credibility of these witnesses". I do not think there is any danger of a trial judge going too far in that direction.

The Supreme Court then is about the only court that is affected by this proposed change in the statute. I object to having even a member of our Supreme Court comparing our court with a court that will reverse a criminal conviction because the word "the" is left out before the name of the State in the closing words of an indictment. I don't think you can make a law that will save a court from errors of that kind without at the same time creating greater evils than the ones intended to be remedied. You cannot pass a law that will create efficiency among the judges. If the court is going to be saved from such things as saying that a man is wrongly convicted because the indictment said "contrary to the law of State of Missouri", instead of "*the* State of Missouri", then I say, the law and the courts have fallen in very evil ways, and we had better have the recalls as proposed in Oklahoma.

With reference to the public demands, I might suggest an illustration: When Governor Boies was Chief Executive of this State, the Legislature, probably in obedience to what they thought was a great public demand, passed a law to protect people from liability upon certain promissory notes, which these people signed, thinking they had signed an agricultural implement contract. Governor Boies promptly vetoed it, because if passed it would create more evils than those already existing, and nobody in the State of Iowa was heard to complain of the Governor's act in doing that. This shows that we are sometimes mistaken as to what the public demands, or that some mob is the public, or some newspaper is the public.

When it comes to the Supreme Court reversing cases, it seems to me not many lawyers will say that the Supreme Court re-

verses more cases than it ought to reverse. Their natural inclination is to be averse to reversal. The trial judge does not want to be reversed. He does not feel like confessing that he has wasted the expense of a trial by an error of his own. The natural inclination of the court is to let a verdict stand and let the jury take the responsibility. I think the same thing occurs in the Supreme Court; but they have the power to go as far as they ought to without changing the law. I remember a case tried over twenty years ago, when my present partner and I were on opposite sides. I wanted an instruction which was refused. Mr. Wheeler got a verdict for his client and I appealed. The Supreme Court said squarely in so many words that my instruction was right (this was before any of the present members were on the bench). They said some dependence may be placed upon the common sense of the jury. The men who rendered that decision are all gone, but the decision is still there.

Now let us take the case Judge Clements suggested. Suppose in a criminal case, the judge charges that the defendant may be found guilty by a preponderance of the evidence. He appeals. He has the burden of showing that error was prejudicial to him. How is he going to do it? Will it be proper for the Supreme Court to say, we will go through all the evidence in this case, and if we find upon all the evidence that there is no reasonable doubt, we will affirm the case? Or put it the other way: it will be for the accused to show to the Supreme Court that the jury did not convict him beyond a reasonable doubt, and say among themselves there is no doubt of his guilt.

Now, the Supreme Court of Iowa has more than once reversed the trial court on the question of the sufficiency of the evidence. Yet, as a rule they do not do so. They say, as a rule, that the verdict of the jury is conclusive, and they will not consider it if there is any evidence to support the verdict.

I think the Supreme Court has all the leeway and all the rights for reversal without changing the burden over on to the appellant to say there was prejudice. The defeated party is entitled to a correct record, just as much as the winning party is entitled to his verdict. There are just as many defeated parties as successful ones. I think if there is anything wrong in the ad-

ministration of the law as it now stands, we shall be jumping out of the frying pan into the fire if we undertake to correct it by this amendment.

GEORGE W. SEEVERS: Gentlemen of the Convention: I confess a deep interest in the subject under consideration. During some years of experience, I have had opportunity to deal with juries and to consider their errors, and perhaps to multiply and magnify my own misfortune as counsel. I do not permit any gentleman of the bar of this State to outdo me in the admiration I feel for the judiciary of Iowa, and the fact that this resolution is presented by a member of the Supreme Court of this State should give it added importance. I do not believe, however, it is true, as has been suggested, that there is any want of confidence in the people of this State in its judiciary, either supreme or subordinate. I believe the confidence of the people of Iowa is implicit and abiding in the integrity of our courts. If any complaint is found, it is in the inexperience of a trial judge and not with his integrity.

I am, however, very slow to depart from that long established usage, that long practice of determining the rights of men in trial by a jury of their peers. The history of trial by jury, if I remember it, covers many centuries. I did not expect to speak upon this subject until I came here this morning. As I remember, the history of that tribunal we call a jury grew up from the very primitive necessity of determining human rights. It has grown through centuries, up to the high standard it has reached in the most civilized countries in the world. Originally, as I remember it, a jury was only qualified to sit in determining an issue of a fact where they had personal knowledge of the transaction, and it was tried upon the personal knowledge of the juror without the introduction of testimony; and from that time on it has grown to the system we have today, a system adopted in the most civilized and enlightened countries on the face of the earth.

I believe it is an unwise and dangerous step to go backward upon the power of the jury as thus established. In the trial of our cases, litigants are encouraged that they shall be treated fairly because they are told by the court what the law is, and that the jury are the sole judges of the facts, and that they may

give it such credit and force only as they deem it entitled to receive. They have confidence in the jury because it comes from among the people.

I do not agree with the statement made by the ex-judge from Iowa City, that the people of the State are dissatisfied with our judiciary in Iowa. They have confidence in our judiciary, because a part of it and the plan of it is of and from themselves, and hence I believe it a dangerous step to withdraw from the essentials of the trial the determination of fact by the people at large. I believe the confidence in our jury system comes from that fact that from their neighbors and the body of the people shall be selected the arbiters of the facts in the disagreements between men.

I would be glad, indeed, to lighten the burden of our courts; I know they are many; I know they are too great. But at the same time that burden should not be given at the expense of litigants or at the expense of the confidence of the people of this State.

I think I know, and I feel, or think I feel, at least, something of the pulse of the farmer of Iowa. Being a farmer myself, I have a right to speak for that class and I do, and I say without fear of contradiction that in the farmers of this State there is lodged everywhere, in every community, a sincere admiration and respect for the courts. I believe it is wholly due to the fact that the jury are to determine the facts upon which the case is tried, and the judges are to administer the law in the case.

I therefore believe, with all due respect for the courts, with all due respect for the subject as it has been presented so ably by the member of the Supreme Court of this State, speaking from my own experience and judgment, I feel constrained to vote against the resolution.

THE PRESIDENT: The chairman of the committee may have a few moments to close the argument upon this subject.

JUSTICE DEEMER: This is not a new subject. It is one which has engaged the best thought of the best men of this country for ten or fifteen years. It has been suggested that it is the outgrowth of the cry of the mob. That mob was made up of the

members of the American Bar Association, who first whipped it into shape. It was embodied into the Federal Judicial Code by a mob—which my friend Lacey has just left. It has now been adopted by another mob in the State of Missouri; another mob in Wisconsin; it has been adopted by another in the State of New York, and followed by another legislative mob in the State of Washington. What was the genesis of this? Why did the conservative American Bar Association take it up? Why is it that such men as Andrew D. White, Prof. Wigmore, and many other such men have given their best thought to this proposition? Let me tell you. About forty per cent of the cases appealed from the lower courts of this country are reversed. The startling thing about it is that nearly fifty per cent of those reversals were based upon technicalities. Gentlemen are talking at random here. The committee had in mind primarily procedural reform. We are not recommending any change in substantive law. Something has been said about destroying the jury system. We are trying to save it. You say it is more capable and has a better and more logical mind to decide facts than has the court, and that is what we say. Are you going to say, after the jury has heard all the facts and returned its verdict that because of some little fault in the dot of a pleading or in the admission of testimony, we are going to reverse the judgment? And here is my friend Parrish, who says that although the jury has this keen power of analysis, yet if the court allows immaterial testimony to be admitted there is error, and as that error is presumed to be prejudicial the case must be reversed. Why? Because it disturbed the logical process of that jury's mind. But gentlemen, here is a most startling proposition. More murders were committed in the city of Chicago last year than in all England.

MAJOR LACEY: In Illinois the judges are the sole judges of the law.

JUSTICE DEEMER: I want to get at the genesis of this thing. There were more homicides committed in New York than in either France or Germany. More lynchings in this country than in any other country on the face of the earth. Why is it? What percentage of convictions for homicide cases do we find in Eng-

land? Ninety-five per cent. What percentage in Germany and France? Seventy-five to eighty per cent. What percentage in free America where we are conserving individual rights? About two per cent.

JUDGE PARRISH: Why don't you confine your efforts to methods of procedure?

JUSTICE DEEMER: If the jurors have powers of analysis as to the fact even better than judges, what is there left except mere technicalities?

MR. R. M. HAINES: Would you abrogate the hearsay rule?

JUSTICE DEEMER: Not at all. This resolution is entirely misunderstood. It is not proposed that the court shall take the record and say what a jury should have done. But here is a technicality some place along the line; here is some defect in procedure; we find the court used the word plaintiff instead of defendant, somebody has to say, under our present rule, this was error; prejudice is presumed and the case is reversed. Under the law as it now exists prejudice will be presumed.

Let me give you an illustration: Here was a man hurt by a street car. The motorman who had charge of the car was supposed to be exceeding the speed limit and ran over a man. He jumped off and went to the place where the injured man was. The motorman was supposed to have said something as to how it happened. When the trial came on the plaintiff put a witness on the stand, and he was asked the question: "What did the motorman say?" The question was objected to and the objection was sustained, because the trial court thought it did not come under the *res gestae* rule. The case came to us and we thought it clearly within the rule. The case went back for retrial and the same witness was placed upon the stand and asked what the motorman said. He answered: "Nothing." Prejudice was presumed and the case was reversed.

MAJOR LACEY: Suppose the motorman on the retrial had gone on and given substantial testimony?

JUSTICE DEEMER: We presumed the prejudice resulted. Now, what should be the rule? In view of this new rule counsel would

go ahead and state what he expected to prove in order to show prejudice.

R. M. HAINES: Isn't that the rule now?

JUSTICE DEEMER: Not where it is clearly apparent from the record what the ruling of the trial court was based upon.

Now, gentlemen, this is a large question. I personally would feel very keenly the defeat of such a resolution as this, after its adoption by the Federal Congress and the American Bar Association. I should hate to see Iowa turn back and say, "No, gentlemen, none of that for us! We still adhere to our old idols."

Now, there is criticism of the courts. Why? Because men do escape punishment right along who ought to be convicted. Brother McConlogue, it is no longer a question of individual rights so much as it is the protection of society.

J. H. MCCONLOGUE: All these writers in England say these defendants were guilty, and in the United States they say only half of them are guilty.

JUSTICE DEEMER: We have overlooked the rights of society. Each and every one of us have seen sentimental people going down and handing bouquets to men behind the bars and observed the same sentiment in the jury box.

R. M. HAINES: Have you ever seen sentimental people going to the plaintiff or defendant in civil cases with bouquets, or have you heard any complaint in civil cases of unjust judgments?

JUSTICE DEEMER: I do not think there is so much need for this amendment in civil cases as in criminal ones.

R. M. HAINES: Is there any relationship?

JUSTICE DEEMER: There certainly is. Why reverse a case on some technicality in the pleadings? There were only twenty-three reversals in all the English courts last year. We have done away in this State with forms of actions, but we still have a lot of technicalities. Thomas Jefferson was not a technical man; some of my brothers have forgotten that; neither was Abraham Lincoln.

Now, gentlemen, this is not the product of the mob, it is not to

appease the mob. The fact is there is a situation confronting us which we as lawyers, with all our conservatism, must meet. We should show our ability to meet it in a sane sort of a way. This proposal is not as broad as has been suggested in other States. It relates to procedural reform. It is not an attempt to minimize any function of the jury, but rather to magnify them. Let us have the verdict of the jury, but let us not set it aside unless there be an error that in some manner affects the substantial rights of the parties.

JUDGE W. G. CLEMENTS: Why is it stated here, "misdirection of the jury"?

JUSTICE DEEMER: You, Judge, have written instructions perhaps which you might have wished to remodel.

JUDGE CLEMENTS: Suppose the judge instructs the jury in such a way that it is not the law?

JUSTICE DEEMER: Procedural matters are the matters here referred to. They are not matters of substance. Whenever they affect substantive law vitally, then there isn't any question about substantial rights. Very often in the hurry of the moment judges do not express themselves as they should and use the wrong word. You as a judge knew when you made that mistake that it affected the verdict not a particle, yet, under our rule, prejudice is presumed and the case must be reversed. Is this the idol to which you gentlemen of the bar are wedded?

THE PRESIDENT: The question now recurs on the adoption of the first recommendation of the committee. All in favor of the recommendation will stand up and be counted by the Secretary.

THE SECRETARY: The vote stands twenty-five in favor of its adoption, and thirty-two opposed to it.

THE PRESIDENT: The recommendation is lost.

MR. CROSBY: It is evident that there will not be time to give this subject of the collateral inheritance tax a fair discussion. I therefore move that it be deferred until next year, to be the special order immediately after the President's Address, on the afternoon of the first day.

The motion was duly seconded and carried.

FRIDAY AFTERNOON SESSION

THE PRESIDENT: Will the Association be in order. We have this afternoon on our program the Annual Address.

I take great pleasure in introducing to you Governor John Burke, of North Dakota. The subject of his Address is "Employers' Liability and Workingmen's Compensation Acts".

GOVERNOR BURKE: *Mr. Chairmen and Gentlemen:* in the preparation of this address, I felt at times that it was somewhat elementary for the lawyers of the great State of Iowa, but I called to mind the story they tell about the Supreme Court of Illinois. A lawyer was presenting a case to that court, and he went back to the very beginning of the practice in his argument, when a member of the court stopped him and told him that he need not quote such elementary propositions, that he ought to presume the court knew some law. The reply of the lawyer was: "That is the very mistake I made in the lower court." So I thought I would take no chance, and would follow out my original intention.

EMPLOYERS' LIABILITY AND WORKINGMEN'S
COMPENSATION ACTS

The marvelous development in the industrial world in the last quarter of a century has made the Employers' Liability and Workingmen's Compensation for industrial accidents one of the most important and interesting legal and economic problems now awaiting solution in the United States.

Only a little while ago we had no great industrial institutions. Every little village, town and hamlet was supplied with small manufactories. The song of the spinning wheel and the loom was heard in every country home. Our homespun clothes were made by our mothers or by the village or country tailor, and our shoes by the village or country shoemaker. In almost every home there was one handy man, who mended the harness and the shoes, set broken limbs, cut hair, and pulled teeth. Even in the larger cities manufactories were small and the employes few in number. The owner of the institution gave it his personal supervision, often working side by side with his employes as a co-worker and friend. The machinery was simple and accidents were few. On

account of the personal contact between employer and employe there was a bond of sympathy existing between them that brought forth the employe's best efforts for the success of his employer; and the employer in return naturally exercised the same care for the protection and life of his servant that he did for himself. If there was an accident resulting in an injury to an employe it was usually one that was unavoidable, and any liability was easily settled through the mutual sympathy and friendship existing between employer and employe. If death resulted from an accident the sorrow of the relatives of the deceased was shared by the employer and employe alike, for all were friends.

But the development in the industrial world has changed all this; the corporation has taken the place of the individual, and finally the trust the place of the corporation. The concentration of wealth has made some of our cities the greatest manufacturing centers of the world, and it binds ocean to ocean with rails of steel. The little manufactories have been purchased or driven out of business by the large industrial institutions, to which the owners no longer give their personal supervision. They are now managed by foremen and superintendents whose business it is to make the institution pay dividends. The capital is owned by stockholders in the corporation or a combination of corporations known as a trust; they know little about the management of the great institution in which they are stockholders; they are interested in its economic management and in the dividends which it pays. The institution with employes few in number has been replaced by the institution which employs thousands upon thousands. The simple machinery of the old-fashioned factory has been replaced with new, modern, complex machinery, which cheapens the cost of production and correspondingly increases the hazard to human life. The bond of sympathy between employer and employe is severed. They do not know each other. They have no interest in each other as individuals. The one invests his money in the institution for the dividends it will earn, and the other enters into the employment for his daily wage. The conditions of each have changed so that it must be very apparent that the rule of liability under the former conditions is not adequate nor just under present conditions.

While modern inventions and improvements in machinery have facilitated manufacturing and cheapened the cost of production, human ingenuity has not been able to construct machinery that will run without human agency. Ingenious as it is it must be set in motion and operated by man. If this development is credited with the decrease in the cost of production should it not be charged with the increased waste of human life and limb? It is responsible for both. This is an age of conservation and should not every industrial institution conserve its own waste, not only in material and machinery but in the agency that operates the machinery; and should not this waste in human life and limb be charged up to the cost of production and the industry made to bear the burden, the same as it must bear the burden of replacing machinery and other wastes connected with the institution? If this can be accomplished it ought to result in the invention of safety appliances for the protection of life and limb and the decrease in waste along this line, in the same way that there has been a decrease in waste in other lines.

Every practitioner knows that the laws governing the right of recovery for industrial accidents under the old conditions are grossly inadequate under present conditions, for, while the employe may recover on proof of negligence on the part of the employer, it is often very difficult if not impossible to prove negligence; and there are any number of accidents for which no recovery can be had because unavoidable or incidental to the operation of the industry. In many cases the employers are insured against liability in casualty companies, and in case of an accident resulting in litigation the right to recover is strenuously resisted by trained men in the employ of the casualty companies, to avoid payment of the insurance. If not insured against liability for accident the employer has his own claim agents who, immediately upon the happening of an accident, proceed to procure a signed statement from the injured, if living, and if dead from the relatives, which is usually colored in favor of the employer and signed at a time when the injured is suffering from pain or the relative overwhelmed with grief. The employer is practically compelled to have his claim agents, or insure in a casualty company against industrial accidents, to protect himself from false

and fictitious claims presented or instituted by claim attorneys, sometimes called "ambulance chasers", who often in the race to the injured workingman beat the claim agent or the representative of the casualty company, and sometimes recover upon a manufactured case. One is just as reprehensible as the other, but while the employer is sometimes held liable in damages in large amounts when there is no real liability, it much more frequently happens that there is no recovery when there should be and that in only a small percentage of the cases is the compensation adequate. The law governing the right to recover has not kept pace with our industrial development.

Take for instance, the fellow-servant law which was established in England in 1837 in the case of *Priestley v. Fowler*, 3 Meeson & Welsby 1. In this case the defendant, Fowler, who was a butcher, directed his helper, Priestley, to take certain goods belonging to the defendant in a certain van also belonging to the defendant, used by him and conducted by another of his servants in carrying goods for hire. The van was loaded by the other servant and Priestley, the plaintiff, and upon the journey the van broke down and the plaintiff was thrown with such violence to the ground that his thigh was fractured. The evidence at the trial showed that the defendant had knowledge of the load that was placed upon the van; it further showed that the van was overloaded. In delivering the opinion of the court Lord Abinger said:

"In most of the cases in which danger may be incurred, if not in all, he (the servant) is just as likely to be acquainted with the probability and extent of it as the master. In that sort of employment, especially, which is described in the declaration in this case, the plaintiff must have known as well as his master, and probably better, whether the van was sufficient, whether it was overloaded, and whether it was likely to carry him safely. In fact, to allow this sort of actions to prevail would be an encouragement to the servant to omit that diligence and caution which he is in duty bound to exercise on the behalf of his master, to protect him against the misconduct or negligence of others who serve him, and which diligence and caution, while they protect the master, are a much better security against any injury the servant may sustain by the negligence of others engaged under the same master, than any recourse against his master for damages could possibly afford."

How vastly different are the conditions surrounding the butch-

er's helper and the van driver in this case, and the employes in a great manufactory of the present day. The butcher's helper and the van driver knew each other; they worked together in the loading of the van and as the court well says: "The plaintiff must have known as well as his master, and probably better, whether the van was sufficient, whether it was overloaded, and whether it was likely to carry him safely." To hold the master liable under such circumstances would be unreasonable and unjust; but it is just as unreasonable and unjust that this rule should govern industrial accidents under the conditions which exist today.

This principle was first followed in this country in the case of *Murray v. South Carolina Railroad Company*, 1 McMullan 385, but the court was very careful to say that the decision was confined strictly to the case before the court; that it did not intend to prejudge other questions that might arise between the company and its servants, and that a case might occur where the owner, whether individual or company, would be liable for the acts of one agent to another. This case seems to have been decided upon the theory that the plaintiff, who was a fireman, was well acquainted with the engineer through whose alleged negligence he was injured; that he had selected him as an engineer to work under; that he had been working under him for some time and that the engineer was thoroughly competent.

This case, together with the case of *Priestley v. Fowler*, is next approved in the case of *Farwell v. The Boston and Worcester Railway Company*, 4 Metcalf 49. In this case the plaintiff was an engineer in charge of an engine which ran off the track at a switch left open by another servant of the defendant, who had been long in their employment as a switchman and tender and had the care of the switches and was careful and trustworthy of character, and as such servant was well known to the plaintiff. It further appears that the engineer, the plaintiff, and the switchman were appointed by the superintendent of the road, who was in the habit of passing over the same frequently and often rode on the engine. It further appears that for his services the engineer received two dollars per day, which was more than the pay of a machinist. Aside from the precedents of *Priestley v.*

Fowler and Murray v. South Carolina Railway Company, two things are considered that seem to have a controlling influence over this case, which are wholly inapplicable to present conditions, and one is unsound in principle. First is the question of the wages that the plaintiff received. I quote from the opinion on page 57:

"The general rule, resulting from considerations as well of justice as of policy, is, that he who engages in the employment of another for the performance of specified duties and services, for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such service, and in LEGAL PRESUMPTION THE COMPENSATION IS ADJUSTED ACCORDINGLY."

And again, on page 59, the court says:

"In applying these principles to the present case it appears that the plaintiff was employed by the defendant as an engineer at the rate of wages usually paid in that employment, BEING A HIGHER RATE THAN THE PLAINTIFF HAD BEFORE RECEIVED AS A MACHINIST."

This is the doctrine of assumed risk, founded upon the theory that the risk is assumed for the extra pay received by the plaintiff as an engineer. In other words, the fact that the engineer was receiving more pay as an engineer than he had previously received as a machinist must have been considered by the court as payment for any injury that he might receive by the increased hazard. The increased pay was his insurance against accident. If not, why was the defendant permitted to show that the plaintiff received more pay as an engineer than as a machinist; and why is this fact twice referred to in the opinion and the principle laid down that the servant takes upon himself the natural and ordinary risks and perils incident to the performance of such service, with the legal presumption that the compensation is adjusted accordingly? Compensation adjusted how? According to the risks and perils incident to the performance of the service; hence, it was competent to show that the engineer was receiving more pay than a machinist, and this extra pay was his compensation for the increased hazard and liability to injury as an engineer. Surely if this principle was ever entitled to any consideration certainly it is no remedy or adequate relief from industrial accidents. It does not benefit the injured, but rather

the uninjured. If extra compensation is paid on account of increased hazard it is of benefit to those who are not injured, but if the employe is injured his compensation stops and there is no relief from that source whatever. Dangerous employments do not always pay the highest wage. This is regulated by the law of supply and demand, and unskilled labor, however dangerous, is poorly paid because of the great supply, while skilled labor because of the great demand commands a higher wage.

Second, the question of knowledge on the part of the employe. Quoting again from the opinion on page 59: "The rule is founded upon the expediency of throwing the risk upon those who can best guard against it." This rule was no doubt applicable to the conditions existing at the time the decision was written. The switch that was left open was probably the only switch in the yard; the switchman who left it open was no doubt the only switchman at that point. The conditions were probably such that the engineer could better guard against the risk than the railway company. But the modern railroad yard in the city is a perfect net-work of side-tracks and switches in the care of many switchmen, and the same rule of throwing the risk upon those who can best guard against it, as applied literally, would shift the burden of responsibility. The court in this case was also careful to disclaim any intention of establishing a precedent, but for years this was the leading case in this country on the fellow-servant rule, although it is difficult to tell which rule had the most influence on the court.

Because of the changing industrial conditions the fellow-servant rule has been much modified. Out of its harshness grew the doctrine of vice-principal. Many of the States have abolished the rule by legislative enactment. It was abolished as to railroads in North Dakota in 1903; it was modified by the Legislature in Arizona in 1901; abolished in Arkansas in 1907; abolished in Georgia in 1909; modified in Idaho in 1909; abolished in Iowa as to railroads, and in 1909 the Legislature of that State abolished the doctrine of assumed risk and modified the law of contributory negligence, as follows:

"The fact that the employe may have been found guilty of contributory negligence, shall not bar a recovery, but the damages shall be diminished by

the jury in proportion to the amount of negligence attributable to such employe. No employe who may have been killed or injured can be held to have been guilty of contributory negligence in any case where the common carrier or corporation contributed to the injury or death of such employe. It shall not be any defense to such action that such employe assumed the risks of his employment."

In 1909 Michigan abolished the fellow-servant rule as applied to railroads; by Section 2042, Laws of 1905, Minnesota has modified the fellow-servant rule making railroads liable for all damages sustained within the State by any agent or servant thereof, without contributory negligence on his part, by reason of the negligence of any other servant. The rule was abolished in Mississippi in 1908; modified in Missouri by Section 2873, Revised Statutes of 1899; abolished in Ohio in 1908; abrogated by the Constitution of Oklahoma; while Texas in 1909 abolished the fellow-servant rule and modified the law on contributory negligence by providing that in all actions brought against any common carrier to recover damages for personal injuries to an employe, or where such injuries have resulted in death, the fact that the employe may have been guilty of contributory negligence is not a bar to recovery, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe.

Every argument that can be used against the fellow-servant law is applicable to the doctrine of assumed risk under present conditions. The employe in a large industrial institution cannot possibly know the risks that he assumes. He may thoroughly understand his own duties and the risk immediately incident to such duties, which may be only a small part of the risk assumed in an institution where there are thousands employed. Only a week ago I visited a manufactory in Beverly, Massachusetts, which has a floor space of twenty-one acres. In this institution one hundred and fifty thousand pounds of steel are used per week; eighteen hundred tons of steel are carried in the stock supply room for use in manufacturing; over nineteen million parts of machines are sent out from the stock room annually and over twenty-four thousand complete machines. To do up and ship the nineteen million parts of machines takes an army of men,

and yet every piece is manufactured in this institution from the moulding to the finished product; and in addition to the nineteen million parts, twenty-four thousand complete machines for the manufacture of shoes are shipped annually from this one institution.

If an injury results from negligence that is willful or intentional there is no reason in justice why the rule should not be enforced, but there are so many cases where "through momentary distraction or inadvertent miscalculation, probably induced by mental or physical fatigue, resulting in accidental injury to the workingman without any intention or moral fault of his own." Such cases are now everywhere recognized as inevitable, a necessary hazard to the work, as certain to happen as machinery is to break. Nearly all accidents are the result of such conditions, whether it be through the negligence of the fellow servant or the contributory negligence of the injured party. The fellow servant has no object in injuring his fellow workingman, and the workingman certainly would not injure himself intentionally, for self-preservation is the first law of nature. Both are unavoidable accidents, occurring with surprising regularity.

Every industry must of necessity employ the most modern appliances and use all the mechanical powers usually employed in such industry. Competition demands this; success depends upon it, and as a result the risk of the workingman daily increases with modern methods of production. Risks that increase with our growth and development; and conditions which lead to the conclusion that with every reasonable precaution we will still have injuries from unavoidable accidents. The employer is benefited by modern machinery with increased production, greater profits and greater opportunities to enrich himself; the public is benefited for the reason that modern machinery has cheapened the cost of production and given to it cheaper commodities; and while the workingman's pay may have increased it has not increased in accordance with the increased risk. This has led to the theory of compensation to the workingman, paid by the employer in the first instance and distributed upon the public generally that consumes the commodity. This principle has been recognized in all European countries, all of which either have some

form of compulsory insurance or a direct law fixing the responsibility directly upon the employer. New York, Illinois, Wisconsin, Minnesota, Washington, and other States have appointed commissions and all have reported against the present system and in favor of laws of compensation, usually elective, for compulsory insurance, or fixing responsibility directly upon the employer. It is true that in some of our industrial institutions there is a scheme of mutual insurance which works out as satisfactorily as the compulsory insurance in Europe. This, however, is to a very limited extent. Many casualty companies have been organized for the purpose of insuring the employer against liability for accidents to workingmen and against suits instituted for injuries occasioned by industrial accidents. Such insurance, however, is of no benefit to the workingman; the companies are not organized for the benefit of the workingman; they are organized for the purpose of making money for the company. They undertake to insure the employer, not only against industrial accidents but against suits, and in case of an accident to settle with the injured person, and if settlement is not effected, the defense of the action; and it is to the interests of the company to make the best possible settlement, and failing in the settlement beat the case if possible. In an address delivered last month in Chicago, to the National Lumber Manufacturing Association, James A. Emery, of Washington, D. C., counsel for the National Association of Manufacturers, stated in substance that according to the last report of the Insurance Commissioner of Connecticut there were forty-nine insurance companies doing business in the State of Connecticut, and that throughout the United States they received \$26,500,000 in annual premiums for employers' liability insurance, and that they paid out in claims about \$9,000,000 during the last year. In other words, of the \$26,500,000 that the employers paid for insurance against accident to their employes, \$9,000,000 of it went to the injured employes while \$17,500,000 flowed into the coffers of the insurance companies. Employers' liability insurance is surely not for the benefit of either employer or employe. How much better would it have been if the entire \$26,500,000 had been paid to the employes as compensation for injuries or as increased wages if the injuries were few; and how

much closer it would have brought employer and employe together in the friendly relation that should exist between them.

The theory of such insurance is wrong in principle for the theory upon which the employer is liable is that he has committed a wrong, he has been guilty of negligence and is liable in damages for his wrongful act; and his insurance against the consequences of his wrongful act is wrong in theory and it is wrong in practice, as it is neither for the benefit of the employer or the employe. It is not permitted in many of the countries of Europe and while it is permitted in some, since the enactment of laws providing for compulsory insurance for the compensation of workmen, the private insurance companies have practically gone out of business. While we in the United States are behind all the European countries we are fortunate in having their laws and their experience to guide us in the final solution of this problem. New York was the first State to appoint a commission to investigate and report to the Legislature, and as a result of the investigation and report New York enacted a law practically the same as the English law, making the employer directly liable in damages for a fixed amount. It preserved to the employe his common-law remedy, giving him the choice between it and the new act, and the employer had to submit to the election without a right to trial by jury on the amount to be recovered. This law was held unconstitutional in the case of *Ives v. South Buffalo Railroad Company*, reported in 94 *Northeastern Reporter* 431, and while you are all no doubt familiar with this decision, a discussion of the same for the effect it will have upon other enactments upon the same subject may be profitable. In the opinion in this case there is one thing that stands out prominently and above all others, and that is, **THAT THE LAW IS UNCONSTITUTIONAL BECAUSE IT MAKES THE EMPLOYER LIABLE WHEN HE IS NOT AT FAULT, WHEN HE HAS OMITTED NO LEGAL DUTY AND HAS COMMITTED NO WRONG.** Every other principle laid down in the decision could be evaded or provided against but this, which is bound to be more or less of an obstacle in every law that may be enacted upon the subject.

It is this principle that controls in the decision on the due process clause of the Constitution and likewise in the discussion

of the police regulation. The court recognizes the necessity for such legislation in the following language, namely:

"In arriving at this conclusion we do not overlook the cogent economic and sociological arguments which are urged in support of the statute. There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such an addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employe should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances, or tools; that, under our present system the loss falls immediately upon the employe who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent; and that our present system is uncertain, unscientific, and wasteful, and fosters a spirit of antagonism between employer and employe which it is to the interests of the state to remove. We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment; but we think it is an appeal which must be made to the people, and not to the courts."

In that part of the decision upon the question of the act being in violation of the due process clause in the Fourteenth Amendment to the Constitution, and in the Constitution of the State of New York, the Court said:

"'Process of law' in its broad sense means law in its regular course of administration through courts of justice, and that is but another way of saying that every man's right to life, liberty, and property is to be disposed of in accordance with those ancient and fundamental principles which were in existence when our Constitutions were adopted. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property in its most comprehensive sense, to be heard by testimony or otherwise, and to have the right of controverting by proof every material fact which bears upon the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him this is not due process of law. . . . When our Constitutions were adopted, it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to the employers enumerated in the new statute, and as to them it provides that they shall be liable to their employes for personal injury by accident to any workmen arising out of and in the course of the employment which is caused in whole or in part, or is contributed to, by a necessary risk or danger of the employment or one inherent in the nature thereof, except that there shall be no liability in any case where the injury

is caused in whole or in part by the serious and willful misconduct of the injured workman. It is conceded that this is a liability unknown to the common law, and we think it plainly constitutes a deprivation of liberty and property under the federal and state Constitutions, unless its imposition can be justified under the police power which will be discussed under a separate head."

In holding that the act is not within the police power, on page 443, the court falls back upon the same principle that there can be no liability where there is no wrong or omission, in the following language:

"Conceding, as we do, that it is within the range of proper legislative action to give a workman two remedies for a wrong, when he had but one before, we ask: BY WHAT STRETCH OF THE POLICE POWER IS THE LEGISLATURE AUTHORIZED TO GIVE A REMEDY FOR NO WRONG? If, before the passage of this law, the employer had a right to a jury trial upon the question of liability, where and how did he lose it? Can it be taken from him by the mere assertion that this statute only reverses the common-law doctrine that the employe assumes the risk of his employment?"

The members of the court did not agree on all of the questions discussed in the two opinions in the case. Judge Werner says in his opinion, on page 438, that the doctrines of contributory negligence and the fellow-servant rule may be regulated or even abolished, and that this is true to a limited extent as to the assumption of risk by the employe. The first paragraph of the syllabus reads as follows:

"The legislature has full power to modify or abolish the fellow-servant rule and the law of contributory negligence, as applied to injuries to servants, and also to a limited extent to regulate the application of the doctrine of assumed risk."

While Judge Cullen in his concurring opinion on page 449, says:

"I concede that the legislature may also abolish as a defense the rule of assumption of risk and that of contributory negligence, unless the accident proceed from the willful act of the employe."

Thus, one opinion holding that the doctrine of assumed risk can be regulated by law only to a limited extent, and the other holding that it can be abolished altogether; while upon the question relating to the scale of compensation and settlement of dis-

putes without a trial by jury, the court disagreed and did not decide.

It is very difficult for me to see any analogy between the case under discussion and the authorities which the court, on page 440, says state clearly the legal principles which it thinks applicable to the case at bar. The first was the case of *Parrot v. Wells, Fargo & Company*, 15 Wallace 524, 21 L. Ed. 206.

"The plaintiff, who was the common landlord of the defendants and other tenants, sought to hold the defendants liable for damages occasioned to the premises occupied by the other tenants, by an explosion of nitro-glycerine which had been delivered to defendants as common carriers for shipment. It appeared that the defendants were innocently ignorant of the contents of the packages containing the dangerous explosives, and that they were guilty of no negligence in receiving or handling them."

Surely this case is not analogous; it is not brought under any statute claimed to be unconstitutional; the plaintiff is simply seeking to recover damages for an injury and the court held that there was no liability. There being no statute of course the plaintiff could only recover upon the ground of negligence, and there being no negligence he could not recover.

The next is a case of the *Ohio & Mississippi Ry. Co. v. Lackey*, 78 Ill. 55, 20 Am. Rep. 259. Plaintiff sought to recover under a statute making every railroad company running cars within the State liable for all the expense of the coroner and his inquest, and the burial of all persons who might die on the cars, or who might be killed by collision or other accident occurring to such cars, or otherwise. This act made the railroad company liable for every death on any of its trains, and for the expenses of the coroner and the funeral. The company was liable without regard to whether death was occasioned by accident, self-inflicted, or from disease. If it had been confined to deaths caused by negligence of the company or its employes, or to deaths caused by unavoidable accidents, it would no doubt have been upheld. It was held unconstitutional because it made the company liable for deaths for which it was in no way responsible, that were not caused by or the result of the journey, but from some other agency.

Then follows a number of cases holding laws unconstitutional for making railroad corporations absolutely liable for the killing

or injuring upon their right-of-way, horses, cattle, etc., by running over them. Such cases cannot be analogous for horses and cattle killed upon a right-of-way are trespassers, they are there wrongfully, and to make the company absolutely liable for the killing of trespassing animals, when there was no negligence on the part of the company or its servants, would be unreasonable and unjust. A number of cases are cited to show that the railroad is liable for the killing of animals when the law requires them to fence their right-of-way and they have failed to do so.

Even had the courts held otherwise I cannot see the applicability of such cases to the case at bar. Neither can I see any good reason in the argument advanced in favor of the decision on page 440, namely:

“If the argument in support of this statute is sound, we do not see why it cannot logically be carried much further. Poverty and misfortune from every cause are detrimental to the state. It would probably conduce to the welfare of all concerned if there could be a more equal distribution of wealth. Many persons have much more property than they can use to advantage and many more find it impossible to get the means for a comfortable existence. If the Legislature can say to an employer, ‘You must compensate your employe for an injury not caused by you or by your fault,’ why can it not go further and say to the man of wealth, ‘You have more property than you need, and your neighbor is so poor that he can barely subsist; in the interests of natural justice you must divide with your neighbor, so that he and his dependents shall not become a charge upon the state?’”

This argument does not apply and such an enactment would be unconstitutional for the same reason that the law making the railroad company liable in any event for a death on its trains was unconstitutional. It cannot be in justice said to the man of wealth: “You have more property than you need, and your neighbor is so poor that he can barely subsist; in the interests of natural justice you must divide with your neighbor”, for the reason that the man of wealth is under no obligation to support his poorer neighbor. You can tax him under a uniform system of taxation for the support of the poor, but he being under no obligation to support the poor generally, cannot be made to do so directly; but if he had a poor father, or mother, or a son, or a daughter, or any near relative that he is naturally under obliga-

tions to, a law compelling him to take care of such relatives and contribute to their support would be upheld.

Is there not almost as great an obligation existing between employer and employe, while the relation exists, and upon this same theory could not the law be sustained? They are co-adventurers; the employer furnishes the money, the employe the labor and the skill and takes all the risk. From the combination of the employer's wealth and the employe's skill comes the finished product, the profits on which go exclusively to the employer, the employe receiving only his daily wage. The law of compensation is not asking charity; it demands justice. And justice demands that the employer should assume the risk to be paid ultimately by the consumer.

Again on page 440 of the opinion:

"If it is competent to impose upon an employer, who has omitted no legal duty and has committed no wrong, a liability based solely upon a legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions, upon the theory that they are devoted largely to the alleviation of ills primarily due to his business. In its final and simple analysis that is taking the property of A. and giving it to B., and that cannot be done under our constitutions. Practical and simple illustrations of the extent to which this theory of liability might be carried could be multiplied *ad infinitum*, and many will readily occur to the thoughtful reader."

This may be true but none of the illustrations offered by the court give any light to me upon the subject. Indeed, the cases offered by the plaintiff in support of the law, and rejected by the court, seem more nearly analogous; for instance, the admiralty cases of *The Osceola*, 189 U. S. 159; *The City of Alexandria*, (D. C.) 17 Fed. Rep. 390, and the case of *Scarff v. Metcalf*, 107 N. Y. 211. In relation to these cases the court says:

"They seem to us equally inapplicable as authorities for the proposition that the law recognizes liability without fault. It is common knowledge that the contracts and services of seamen are exceptional in character. A seaman engages for the voyage. He is subject to physical discipline, and exposed to hardships and dangers peculiar to the sea. He is, in effect, a co-adventurer with the master, and shares in the risks of shipwreck and capture, often LOSING HIS WAGES BY CASUALTIES WHICH DO NOT AFFECT WORKMEN ON LAND. FOR THESE AND MANY OTHER OBVIOUS REASONS THE MARITIME LAW HAS WISELY AND BENEVOLENTLY BUILT UP PECULIAR RIGHTS

AND PRIVILEGES for the protection of the seaman which are not cognizable in the common law. When he is sick or injured he is entitled to be cared for at the expense of the ship, and, for the failure of the master to perform his duty in this regard, the ship or the owner is liable. That is a right given to the seaman, and a duty enjoined upon the master, by the plainest dictates of justice, which arises out of the necessities of the case; and, because of the reason of the rule, the right and duty cease when the contract has terminated and the seaman has been returned to the port of shipment or discharged, or has been furnished with means to do so. But, beyond this duty on the part of the master or owner, there seems to be no liability whatever for injuries sustained by the seaman in the course of his work."

The contract and service of seamen are exceptional in character. The seaman engages for a voyage, it is true, for when he starts out on the voyage it is natural that he should want to return. He would not want to be turned loose in mid-ocean and the master would want to make sure of sailors sufficient in number to bring the ship home; hence, he engages for the voyage. He is subject to physical discipline, for there is no other discipline on the ocean; he is out of the reach of courts and physical discipline may be necessary. The service demands all this for the safety of the ship, the cargo, and the lives of the passengers. But compare in parallel columns what the court says about protection to the seaman and the employe on land, and the remedy for each, as follows:

Workman

(Page 439)

"There can be no doubt as to the theory of this law. It is based upon the proposition that the inherent risks of an employment should in justice be placed upon the shoulders of the employer, who can protect himself against loss by insurance and by such addition to the price of his wares as to cast the burden ultimately upon the consumer; that indemnity to an injured employe should be as much a charge upon the business as the cost of replacing or repairing disabled or defective machinery, appliances, or tools; that,

Seaman

(Page 446)

"It is common knowledge that the contracts and services of seamen are exceptional in character. A seaman engages for the voyage. He is subject to physical discipline, and exposed to hardships and dangers peculiar to the sea. He is, in effect, a co-adventurer with the master, and shares in the risks of shipwreck and capture, often losing his wages by casualties which do not affect the workman on land."

under our present system, the loss falls immediately upon the employe who is almost invariably unable to bear it, and ultimately upon the community which is taxed for the support of the indigent; and that our present system is uncertain, unscientific, and wasteful, and fosters a spirit of antagonism between employer and employe which it is to the interests of the state to remove. We have already admitted the strength of this appeal to a recognized and widely prevalent sentiment."

Remedy

"But we think it is an appeal which must be made to the people, and not to the courts."

Remedy

"For these and many other obvious reasons the maritime law has wisely and benevolently built up peculiar rights and privileges for the protection of the seamen which are not cognizable in the common law. When he is sick or injured he is entitled to be cared for at the expense of the ship, and, for failure of the master to perform his duty in this regard, the ship or the owner is liable. That is a right given to the seaman, and a duty enjoined upon the master, by the plainest dictates of justice, which arise out of the necessities of the case."

According to the foregoing the employe on land needs the protection of the law as much as the seaman, and greater reasons are given for legislative action in his behalf. The public is interested in a general way in behalf of the seaman, while the sentiment in favor of legislation protecting the employe is widely prevalent and favored by the State, in whose interest it is to remove the antagonism fostered by the present system between employer and employe. But legislation making the master liable, when without fault, for sickness and care of the seaman, "is a wise and benevolent right given to the seaman and a duty en-

joined upon the master by the plainest dictates of justice"; while the law making the employer liable when without fault for injury to an employe, is "taking his property without due process of law". From whence does the power come to make the master of the ship liable for the care and sickness of seamen, and the act of Congress requiring the master of the ship to contribute monthly for each sailor employed for the maintenance of a marine hospital? It does not come from the Constitution but from Congress and the courts, and cannot the same power that requires the master of the ship to care for the sailor in sickness, that requires him to contribute to the support of a marine hospital, also require him to respond in damages for injuries resulting from unavoidable accidents? "Seamen have been designated as wards of admiralty, in need of the protection of the courts because peculiarly exposed to the wiles of sharpers and unable to take care of themselves." 1 Parson's Ship and Admiralty, 32. "Every court should watch with jealousy any encroachment upon the rights of seamen, because they are unprotected and need counsel, because they are thoughtless and require indulgence, because they are credulous and complying, and are easily overreached," as said by Mr. Justice Story in *Harden v. Gordon*, 2 Mason 541. And as said by Mr. Justice Thompson, in *Cadmus v. Mathews*, 2 Paine 229: "Due weight ought to be given to the character and situation of this class of men."

The Constitution does not make the seaman an exception, and the decisions referred to show how far legislation and the courts may go when the exigencies of the case demand. The seaman is exposed to hardships and dangers peculiar to the sea; the laborer is exposed to the hardships and dangers peculiar to his employment. The seaman is, in effect, a co-adventurer with the master and shares in the risks of shipwreck. The employe in the industrial institution likewise is a co-adventurer with the master, but he does not share the risks of life and limb with the master, he assumes them all himself. The sailor is liable to physical discipline, a rule that is not necessary for the employe for he is within the reach of the courts. The sailor cannot break his contract; neither can the employe, without great inconvenience and sometimes suffering on the part of his loved ones, who are de-

pending upon his daily wage for their daily bread. The sailor is improvident and with a prodigal hand lavishes his earnings upon a "sweetheart in every port", while the employe is usually industrious, frugal, and a home-builder, entitled to at least equal rights with the improvident, prodigal seaman.

There are many cases cited where legislative enactment has absolutely fixed liability without fault upon railroads, for setting fires, for injury or death of passengers, for stock killed on their own unfenced right-of-ways, and Section 634, Freund's Police Power, approves the principle of liability without fault; and upon these authorities the court might well have said, as did Mr. Justice Brown in the case of *Holden v. Hardy*, 169 U. S. 366:

"That the law is to a certain extent a progressive science; that in some of the states methods of procedure which, at the time the Constitution was adopted, were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. . . . The law will be forced to adapt itself to new conditions of society and particularly to the new relations between employer and employe as they arise."

And as said in *Hertado v. California*, 110 U. S. 516, 28 L. Ed. 232: "The flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law", and adapted to modern conditions in *Muller v. Oregon*, 208 U. S. 412, 52 L. Ed. 551.

The use of modern machinery by the employer has increased the danger to employe, and while neither is to blame for unavoidable accidents, if the workingman is made to bear the burden he and his family must bear it alone. While on the other hand the employer reaps large profits from the use of the dangerous machinery and is in a position to add the burden to the cost of the manufactured article and distribute it among the consumers. It is necessary to protect the sailor, Congress and the courts say, because he cannot protect himself. It is likewise necessary to protect the workingman from unavoidable accidents for he cannot protect himself, while the employer can. The burden to the

injured workingman and his family is the cause of poverty, and poverty begets crime. The antagonism between employer and employe is the cause of frequent disturbance of the peace and good order of the state, often resulting in crime. Is it not in the interests of the general welfare of the state to promote peace and good order, to prevent poverty and suppress crime? "The Fourteenth Amendment was not designed to interfere with the power of the state to protect the lives, liberties and property of its citizens; and to promote their health, peace, morals, education and good order." This principle has been clearly held in *Ex parte Kemler*, 136 U. S. 436, 34 L. Ed. 519; *St. Louis & San Francisco Railway Co. v. Mathews*, 165 U. S. 1, 41 L. Ed. 611; *Holden v. Hardy*, 169 U. S. 366, 42 L. Ed. 780; *In re Converse*, 137 U. S. 624, 34 L. Ed. 796; *Barbier v. Connolly*, 113 U. S. 27, 28 L. Ed. 923; *Mugger v. Kansas*, 123 U. S. 560, 31 L. Ed. 205; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 46 L. Ed. 679; *Lochner v. New York*, 198 U. S. 45, 49 L. Ed. 937; *Thorpe v. R. & B. Ry. Co.* 27 Vt. 149; *Slaughterhouse Cases*, 16 Wall. 36, 21 L. Ed. 305; *Passenger Cases*, 7 Howard 283, 12 L. Ed. 702; *Lawton v. Steele*, 152 U. S. 136; 36 L. Ed. 388. Conversely, the police power is a limitation upon the freedom of contract secured by the Fourteenth Amendment. *Holden v. Hardy*, *supra*; *Harbison v. Knoxville Water Co.*, 53 S. W. 993, 183 U. S. 13, 46 L. Ed. 55; *St. Louis I. M. & S. Ry. Co. v. Paul*, 173 U. S. 404; *Atchison, Topeka & Santa Fe Railroad Co. v. Matthews*, 174 U. S. 96; *Beer Co. v. Massachusetts*, 97 U. S. 25. This law would promote the health, and peace, and morals, and education, and good order of the citizens of the State by relieving the distress and poverty of the family of the injured workingman, at the time when they were most in need, and it would seem to me to come fairly within the police power of the State in the light of the decisions quoted.

The decision in this case is based upon the theory that the Constitution does not permit the legislature to enact legislation making a person liable in damages "when he is not at fault", "when he has omitted no legal duty and has committed no wrong". Upon this theory all the legislation making railroad companies absolutely liable for fires started by the use of locomotives, when the company is without fault, would be unconsti-

tutional, and yet such legislation is uniformly held constitutional. In the case of *Union Pacific Railway Co. v. De Busk*, 12 Colo. 294, the court, in construing legislation which declared that every railway company shall be liable for all damages by fire that is set out or caused by operation of its road, said: "Such statutes are not penal, but purely remedial in their nature, and enacted for the better protection of property exposed to such unusual dangers." Chief Justice Shaw of Massachusetts declared that the "design as well as the legal effect of such a statute was to afford indemnity for those suffering damages from fire caused by the use of a dangerous apparatus". "It is not a penal statute, but purely remedial in its nature; and it is to be interpreted fairly and liberally, so as to secure to parties injured an indemnity from those who reap the advantages and profits arising from the use of a dangerous mode of locomotion, by means of which buildings and other property are destroyed": *Hart v. Western R. R. Co.* 13 Met. 99, 46 Am. Dec. 719; *Lyman v. Boston etc. R. R. Co.*, 4 Cush. 288; *Pratt v. Atlantic etc. R. R. Co.*, 42 Me. 579; *Smith v. Boston etc. R. R. Co.*, 63 N. H. 25; *Ross v. Boston etc. R. R. Co.*, 6 Allen 87; *Rodemacher v. Milwaukee etc. R. R. Co.*, 41 Iowa 297; 20 Am. Rep. 592; *St. Louis and San Francisco R. R. Co. v. Mathews*, 165 U. S. 1; *Grissell v. Housatonic R. R. Co.*, 54 Conn. 447; *Hartford Ins. Co. v. C. M. & St. P. Ry. Co.*, 62 Fed. 904; *Ingersoll & Quigley v. Stockbridge & Pittsfield R. R. Co.*, 8 Allen 438; *Grand Trunk Ry. Co. v. Richardson*, 91 U. S. 454.

Can it be possible that the legislature can go farther in the protection of property than it can for the protection of human life? No, such is not the intention of the Constitution. This legislation held unconstitutional by the New York Court of Appeals is likewise remedial legislation. It is intended to regulate the use of dangerous machinery in industrial institutions and dangerous employments connected therewith; and unless the Constitution intends to place a higher value upon mere property than it does upon life and limb, the law is constitutional. The railway company is made absolutely liable for fires started by the locomotives when without fault, when it has omitted no legal duty and has committed no wrong, because the railway company

is using locomotive power that is dangerous, that is liable to set fires, and is making large profits out of the business. So, too, the employer to increase his profits uses dangerous machinery, the operation of which causes great loss of life and limb to the employes. The one is destructive of property, the other destructive of human life and limb; and shall it be said that the laws of this country under the Constitution shall afford protection to the one that is destructive of property and no protection to the one that is destructive of human life? If the courts are to make a distinction it should be in favor of the legislation which affords protection to life rather than to property, and ultimately such will be the distinction. The scale of compensation and settlement of disputes provided for in the New York law deprives the employer of the right to have the jury fix the amount which he shall pay when his liability to pay has been determined. This is a dangerous provision in the law for it has always been one of the functions of a jury to pass upon the amount in controversy, or the amount of damages sustained, as well as upon liability. This subject is thoroughly discussed in the elaborate notes following the case of *Flint River Steamboat Co. v. Roberts*, 48 Am. Dec. 178. The Seventh Amendment to the Constitution of the United States does not, of course, apply to State legislation, but there are similar provisions in all the State Constitutions, usually a little stronger. I quote from the notes referred to:

“The trial by jury secured to the subject by the Constitution is a trial according to the course of the common law, and the same in substance as that which was in use when the Constitution was framed. On this all the decisions agree.”

It being one of the functions of the jury to pass upon the amount of recovery as well as the liability, and such being the law at the time of the adoption of the different constitutions of the different States, it will be seen that the provision referred to in the New York law, which takes away from the jury this function, is a dangerous provision. For, if the legislature can take from the jury one of its legitimate functions it can take them all, and thus take away the right of trial by jury altogether. This objection, however, is not serious, for it can be avoided in a compensation law by providing for a trial with a jury

upon the election of either party. This would preserve the right and the employer would never ask for a jury trial, for he knows that the jury would be more liberal with the employe than would the legislature.

It is claimed that the compulsory contribution of both employer and employe to a fund created for a public purpose, having for its object compensation for industrial accidents, can be sustained as a taxing measure; but if an employer cannot be made wholly liable upon what principle can he be held partially liable? The State of Montana recently passed such a law which is now being considered by the Supreme Court of that State in an action contesting it on the grounds that it is unconstitutional, and the outcome will be watched with interest. It is claimed that the law recently passed in New Jersey, and which is similar to the laws of Wisconsin and Washington on this subject, avoids all the objections to the law held unconstitutional by the New York Court of Appeals in the case of *Ives v. Railroad Company*, by making the system of compensation optional. If the employer elects to come under the law of course he can raise no legal objection; if he refuses he is deprived of his common law defenses, namely: the fellow-servant defense, the doctrine of assumed risk and the defense of contributory negligence. But the depriving him of these defenses does not make him liable unless he is negligent and at fault, and if he cannot be held liable when he is not at fault and has done no wrong, of what use will it be to abolish these defenses? You can tell him "You shall no longer plead the negligence of the employe as a defense", but this does not make the employer liable, for under the New York decision he cannot be liable unless he is personally at fault. You may say to him that he shall no longer plead as a defense the doctrine of assumed risk, but taking from him this defense does not make him liable. You may take from him the right to plead as a defense that the accident was caused through the negligence of the fellow servant, but this does not make the employer liable, for the doctrine of *respondeat superior* never did apply to such case. Possibly the law might go so far as to say that every industrial accident is *prima facie* evidence of negligence on the part of the employer, but this, however, would be only a presumption easily

overcome by showing that the employer and his agents used *all* the care that the law required and all the modern appliances for the protection of human life and limb; and so it appears to me that this decision in the Ives case is going to be more or less of an obstacle to all legislation upon the subject if it is followed generally by the courts. It is to be hoped, however, that the employers will recognize the great necessity there is for legislation that will give to the employe adequate compensation for industrial accidents, and that the employer and employe may get together and agree upon a uniform law for every State in the Union. This is one subject upon which the laws should be uniform, that the employers of one State might not have an advantage over the employers of other States.

Practically all the civilized countries of Europe have adopted the insurance plan against industrial accidents, and in adopting the compulsory principle have been careful that compensation shall be proportioned to actual financial loss to the injured. It is based upon the actual current earnings of the workingman, and fixed at a percentage in cases of total disability on concurrent wages varying from fifty in Great Britain to as high as seventy per cent in Holland.

The German system has given the most general satisfaction. It is conducted entirely by mutual association of employers, supervised by the state. Every employer contributes yearly in accordance with the risk of his establishment and his pay-roll, the risk being determined by means of a classified tariff of rates drawn up by the association. The law confers on them the privilege of prescribing preventive rules and regulations that have the force of law and must be complied with. The association may send inspectors to any factory or establishment at any time, and in case of negligence the employer may be fined or given a higher rate for a higher risk. In case of flagrant neglect the factory may be closed. Workingmen are also subject to regulation on the part of the association.

This subject received consideration in Germany as early as 1838, in the recognition of the new principle of liability by employers to provide compensation for industrial accidents. To check the force of discontent after the Franco-Prussian war,

Bismarck, one of the greatest statesmen of his or any other age, in 1881 presented a plan of compulsory insurance of working-men. In commenting upon this in the work entitled "Working-men's Insurance in Europe", by Frankel and Dawson, the author says:

"In the short period of nine years, 1881-1889, every detail of this comprehensive scheme was put into operation. Legislation so far-reaching in its consequences had never before been attempted. Though at the time regarded as revolutionary in character, it has served the country better than its great author dreamed possible. Now at the close of a period of twenty-five years, it is recognized as the most effective instrument for the protection of the great body of people in the important exigencies of life; and its merits are warmly appreciated by all who have the welfare of the nation at heart."

Bismarck's compulsory insurance bill presented to the Reichstag in 1881 received the approval of that body, but it refused to vote financial support and also desired to substitute separate departments for the kingdom, which amendments were rejected by the government, whereupon Emperor William sent a message to the Reichstag, as follows:

"We consider it Our Imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with increased satisfaction the manifold successes with which the Lord has blessed Our reign, could We carry with Us to the grave the consciousness of leaving Our country an additional and lasting assurance of internal peace, and the conviction that We have rendered the needy that assistance to which they are justly entitled. Our efforts in this direction are certain of the approval of all the Federate Governments, and We confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views, a Bill for the Insurance of Workmen against Industrial Accidents will first of all be laid before you; after which a supplementary measure will be submitted, providing for a general organization of industrial Sick Relief Insurance. Likewise, those who are disabled in consequence of Old Age or Invalidity possess a well-founded claim to more ample relief on the part of the State than they have hitherto enjoyed. To devise the fittest ways and means for making such provision, however difficult, is one of the highest obligations of every community, based on the moral principles of Christianity. A more intimate acquaintance with the actual capabilities of the people, and a mode of turning these to account in corporate associations, under the patronage and with the aid of the State, will, We trust, develop a scheme to solve which the State alone would prove unequal."

This humane and patriotic appeal resulted in the passage of the first compulsory insurance law in Germany, under which the same authority claims:

"The most striking fact in the remarkable industrial advance made by Germany during the last half century is the improved condition of the great body of its working people. On all sides are evidences of greater effectiveness, contentment, and prosperity. Many causes have undoubtedly contributed to this end, but perhaps the most important has been the fostering care of the government. It has met the requirements of its people in an orderly and businesslike manner, looking upon their occupations as both social and individual in character. . . . The wide scope of this branch of workmen's insurance is evident from the fact that at the close of 1907 more than 21,000,000 working people, employed in nearly 5,500,000 separate establishments, were directly insured under the provisions of the law. . . . Notwithstanding great improvements in safety appliances and other means of prevention, the number of accidents, with the single exception of those resulting in complete permanent disablement, has increased rapidly per thousand insured. The average duration of disability has also increased, doubtless partly due to the broadening of the statutes. The same condition has been observed in all other countries where liability laws have been liberalized. The increase is also ascribed to simulation and to malingering, as it is certain that some workmen take advantage of the slightest accident to claim compensation. But the chief cause of increase in the number of accidents in Germany is unquestionably the greater complication of industry, the greater hazard necessarily resulting therefrom and intensity of pressure upon workmen. With the strong tendency to migrate from the country to industrial cities, thousands of men enter factories who are not by training prepared for the complex machinery they must handle. These factors augment the number and the seriousness of accidents.

"In general, accidents increase in number as workmen become older. Thus, in the industrial, building, and marine associations of employers, the rate per annum was 3.6 per 1000 insured for those between the ages of eighteen and twenty, 5.4 for those between twenty and thirty years, 9.2 for those between thirty and forty, 12.3 for those between forty and fifty, and 13.8 for those between fifty and sixty years. More accidents occur in the summer months when the activity in certain occupations is greatest and when more men are at work; and Monday and Saturday are accountable for a heavier toll than the remaining week days. The large number of accidents occurring on Saturdays is doubtless caused by the strain of the week's work, while those of Monday are very likely the result of Sunday's jollification.

"The four classes of accidents, taken together, have almost doubled in frequency in the last twenty years, while those resulting in temporary injuries only, but exceeding thirteen weeks in duration, have increased five-fold in the same period. The one striking exception is the constant re-

duction in the number of completely disabled and killed. This is very likely due to the care which the mutual associations of employers exercise in dealing with cases of serious injury.

"The operation of the law has, on the whole, been satisfactory to the German people. There has been much improvement in the efficiency of workmen, and employers have indirectly reaped returns for their compulsory outlay. It may be true, as is sometimes claimed, that the law has had some tendency to decrease the sense of personal responsibility on the part of workmen and to tempt them to secure compensation for the slightest injury; but they, on their part, have never been content with the arrangement that placed the adjustment of compensation in the first instance in the hands of the employers' associations. As a result of this dissatisfaction these adjustments are constantly challenged. Appeals from the awards of the associations of employers as well as those of the arbitration board are only too common, the more so because litigation is free."

It appears from this report that while compulsory insurance in Germany is generally satisfactory, that it is not free from objection and it is very far from perfect. A commission appointed by the English government will make its report on the English law the last of this month. This will no doubt give us much valuable information upon that law. We are living in a progressive age and we must meet and solve this economic problem in accordance with the spirit of the age. More depends upon the employer and employe than on any other class. If they can in some way be brought closer together, as they were when the employer and employe worked side by side as friends and co-workers, the problem will be solved.

J. H. McCONLOGUE: I take great pleasure in moving a vote of thanks by this Association to Governor Burke, for his able address delivered this afternoon, and that we express to him the fact that the Iowa Bar Association is proud of the honor that has been conferred upon him so lavishly by the State of North Dakota.

The motion was duly seconded and unanimously adopted by a rising vote.

THE PRESIDENT: The next is the report of the Executive Committee.

THE SECRETARY: The report of the Executive Committee is as follows: The place of meeting for next year was first decided

upon as Jefferson, Iowa. This action was later reconsidered and the selection of a place for the holding of the next meeting was left to a committee consisting of Senator C. G. Saunders of Council Bluffs, and Judge H. M. Remley of Anamosa.

The time for the next meeting was fixed as the last Thursday and Friday in June, 1912, that is, June 27 and 28.

The following Committees were named :

Legal Education and Admission to the Bar: S. M. Ladd, of Des Moines; E. B. Evans, of Des Moines; Ralph Otto, of Iowa City; H. J. Wilson, of Burlington; J. C. France, of Tipton.

Legal Biography: C. J. Wilson, of Washington; W. R. Lewis, of Montezuma.

Law Reform: E. B. Evans, of Des Moines; J. J. Clark, of Mason City; M. A. Roberts, of Ottumwa; C. H. Van Law, of Marshalltown; E. W. Weeks, of Guthrie Center; Carroll Wright, of Des Moines; A. N. Hobson, of West Union.

Membership: (Chairman to be appointed); Frank S. Dunshee, of Des Moines; James A. Devitt, of Oskaloosa.

Grievances: J. B. Weaver, Jr., of Des Moines; T. S. Stevens, of Hamburg; John McCoy, of Oskaloosa.

Delegate to American Bar Association: H. C. Horack, of Iowa City.

Program: C. G. Saunders, of Council Bluffs; H. E. Deemer, of Red Oak.

The President was authorized to fill the vacancy in the Membership Committee, and to fill any other vacancies that may occur.

Upon motion duly made the report of the committee was adopted.

JUDGE M. J. WADE: In the discussion this morning, I was on the minority side. I want to be fair with the other side. Since adjournment I think the Secretary has received a letter from one of the members of the Association upon that subject, which he intended to have read here, and I think it ought to be added to the record.

I therefore move that Mr. O. M. Brockett's letter be read by the Secretary and incorporated in the proceedings.

The motion was duly seconded and carried.

The letter is as follows:

Des Moines, Iowa, June 29, 1911.

MR. CHAS. M. DUTCHER,
Secretary State Bar Association,
Oskaloosa, Iowa.

Dear Sir:

I regret very much my inability to be present at the meeting of the Association today and tomorrow. Besides the interest in the proceedings and the anticipated pleasures of fellowship and friendly greetings I desired to cast my vote against the recommendation of the Committee on Law Reform for an act to increase the embarrassment of our Supreme Court in reviewing the errors of our trial courts.

After more than thirty years of experience and observation in my work at the bar in this State I am unable to escape the conclusion that our State court of last resort is already too reluctant to interfere with judgments on account of irregularities in proceedings.

The proposal seems to me to approach the wrong end of an admitted evil. It is an attempt to obscure it rather than to remedy it. If our trial courts were up to the standard which the times demand and our Commonwealth is entitled to I am persuaded that the number and percentage of reversals would be so materially reduced as that no one would think of changing the present rule. At least not in the direction of further hampering the power of review. And if it is thought to be impracticable to elevate the standard of ability of our trial judges in the present state of public sentiment, what hope for it can remain after our Supreme Court is further shorn of much of its power to give to the people of the State authoritative notice from time to time of their incompetency?

Would it not be more profitable to consider whether matters can be mended by a change of method in the selection of our judges? So far as it is governed by statute there is probably no

State in the Union which commits this high responsibility more unreservedly to ordinary politics and political methods than does Iowa.

It has occurred to me that it would be much better if the names of our judicial candidates were placed upon the ballots by petition, without party designation, and with a requirement that the petition should bear the signatures of a large percentage of the bar of the districts of the respective candidates.

If I were permitted to vote by proxy I should certainly direct you, Mr. Secretary, to cast my vote in the negative on the recommendation of the committee referred to.

Yours very truly,

O. M. BROCKETT.

THE PRESIDENT: Let the Committee on Law Reform proceed with the further recommendations.

JUSTICE DEEMER: By a singular coincidence, the argument made in favor of the second recommendation of the committee is unexpected. I do not know that anything can be added to the Governor's paper. Nothing could be more timely. I may say, that the chairman of the Commission appointed in this State is present, and I will ask him to say what he may have to say in favor of this resolution.

SENATOR JOHN T. CLARKSON: *Members of the Bar Association:* I am sure it would be presumptuous upon my part to undertake to add anything to what has been said upon this subject. I feel that I would be amply safe in waiving further argument and submitting the case to the jury.

The proposition is one that is not only of vital interest to the business industries of this country, but it is one of great interest to the legal profession. It is peculiarly a field of inquiry in which we must expect the lawyer to be in the advance guard, because it has to do with legal principles. We cannot expect the laymen to take the initiative upon this proposition. It is one that has to do with the common law that has been in vogue for years, and we therefore could not expect the laymen to pave the way for the preparation of a law of this sort. Hence of necessity we

must depend upon the lawyer to reach out as the pioneer, so to speak, and pave the way.

I know of no better place to begin with than that the Bar Association of this State will take the initiative along that line. We are in hopes to be able to avail ourselves of data that will enable the Commission to prepare a bill to be presented to the next General Assembly that will do exact justice to all concerned. That it would be absurd to undertake to impose a burden upon the industries in this State in such a way that they could not fairly compete with other States, we are all agreed. That it would be disastrous to say that the industries of Iowa shall have a greater burden to bear than the industries in sister States, I think we will all be agreed. But that Iowa shall stand as an advance guard in this line, I think we ought to be ready to agree, and for that reason, Mr. Chairman, I trust that the Bar Association of this State will take the initiative and aid and assist us in paving the way, in order that these great accidents, of vital import to the industries of this State will be settled, and settled right, and settled from a business standpoint; from a standpoint that all concerned will receive careful, fair, and proper consideration.

SENATOR C. G. SAUNDERS: For the last three or four years I have given this subject some consideration. I am firmly convinced that it is the duty of the lawmaking power of the several States of this Union to enact a law of this sort. It is humane; it is just, and I hope that the time will soon come when the State of Iowa will have upon its statute books a workingmen's compensation act that shall be just, both for the workingman and employer. I therefore favor the adoption of the resolution.

WILLIAM MCNETT: I think this is also a large subject. It is four o'clock now, a very hot day, and I do not believe it could receive the consideration here its importance demands.

I therefore move that its consideration be postponed until our next annual meeting.

The motion was duly seconded and carried.

JUSTICE DEEMER: The next recommendation reads: "We approve the act introduced in the last Legislature at the suggestion

of the Law Reform Committee of this Association for the relief of the Supreme Court and especially recommend and urge its adoption by the next General Assembly."

Copies of that bill were here upon the table yesterday, and I think you are all advised upon it. I bring the matter to your attention at this time to see if any one has any suggestions to make. We feel that the Supreme Court of this State should have relief, and when we get it, we want it in the very best possible form. I hoped to have Judge Walter I. Smith give us his views with reference to the remedy, but I see he is not here. I think he had to leave. In brief, his suggestion is modeled upon the practice which now prevails in the Circuit Court of Appeals. There are four judges of that court, but only three sit. He suggests that the court itself consist of five members, but that there be nine judges; five constantly sitting, and four off, in the interim writing opinions. I do not know whether that is the solution or not. Perhaps under this bill the Chief Justice could so regulate it as that there would be a change in the personnel of the two divisions, so that we would practically have the same situation.

GEO. W. SEEVERS: Was not Mr. Smith's suggestion also, that the Chief Justice should preside, be one of the five, so that the Chief Justice were present when the four judges were writing opinions, and in that way relieve the Chief Justice from the duty of writing opinions.

JUSTICE DEEMER: Of course, the Chief Justice would sit constantly in open session, but would be relieved from writing opinions. And that was the plan of this bill, to have him constantly present, but relieve him from writing opinions, but cast upon him the burden of granting vacation orders.

MR. SEEVERS: Does that meet with the approval of your court in the matter of the conduct of the business?

JUSTICE DEEMER: I think so. The reason we bring this up is to get suggestions.

MAJOR JOHN F. LACEY: Have you considered the thought of dividing the court, like they do in Texas; have one division in criminal cases and the other in civil?

JUSTICE DEEMER: That was not the thought. The court as now constituted does not favor that arrangement.

WILLIAM MCNETT: This is a measure of importance. I do not think it needs very much discussion this afternoon. I think we all realize that the Supreme Court is overworked and does not find time to consider the cases as they feel they should. I do not believe this is the time to discuss the particular measures. I do think we ought to dispose of this matter by giving sanction to the idea of giving them some relief. I went to Des Moines last winter to confer with Justice Deemer and a number of others. I rather thought the scheme they had at that time was all right, and I thought when we left there it would go through the Legislature. But it seems it got into a political tangle and it was wrecked. What I am in favor of this afternoon is to pass some resolution, or else appoint a committee which will sanction the views of the State Bar Association. I am willing to vote for it, just as it is.

JUDGE M. J. WADE: I want to concur in what Mr. McNett says. We ought to act today. I believe it would be a good plan to amend this resolution, and appoint a committee of five to confer with the Supreme Court, and to try and work out a plan, without trying to decide anything today.

I therefore move that the resolution be amended by the appointment of a committee of five for the purpose of considering a plan of organization, in conference with the members of the present court, and for the purpose of getting the matter before the next Legislature, and that that committee report at the next meeting of this Association.

The motion was duly seconded and carried.

THE PRESIDENT: I will appoint Judge M. J. Wade, William McNett, George W. Seevers, W. Hoffman, and C. A. Carpenter.

JUSTICE DEEMER: The next and fourth recommendation has reference to what was known as the original Blanchard Act. It used to be that a man who filed a demurrer to a petition had to stand on it, or that the ruling made the law for that case. According to the Blanchard Act, he could demur and still go ahead,

or could raise a law proposition by answer, and was not bound by any decision that the court made, but could go on and challenge any legal questions all the way through the case. The result has been, these demurrers are constantly filed; no attention is paid to the ruling and the case is tried out to the jury, and then he takes up to the court the questions involved.

Now, the proposition embodied here is to change that, and say, that if a man demurs to a petition, and the demurrer is overruled, he must then elect to stand upon that demurrer. He does not have to demur; he can challenge the sufficiency of that petition, by motion in arrest. It has seemed to me, in view of some cases which have come to us, that it would have been much better for the litigants if the legal proposition had been settled upon ruling of the demurrer, before they went to that tremendous expense of the trial of that case.

Now, the fact is—here is a petition; the defendant thinks it is defective; he is so confident that he is willing to stand upon that demurrer. So he challenges the legal proposition. If he is beaten, he should not then go to speculate with the jury, but ought to appeal and have that legal question settled; after that is done, if there is anything left in the case, he should try it out.

I believe it is a matter of economy to litigants to adopt this measure. The act is safeguarded; it provides it should not be conclusive; a man waives nothing.

This recommendation reads as follows:

“Sec. 3564 of the Code should be repealed and the following enacted as a substitute:

“The defendant or plaintiff may demur to one or more of the several causes of action alleged in the petition or counter-claim and answer or reply to the residue. And no pleading shall be held sufficient merely because of failure to demur thereto. But if the petition of plaintiff or the counter-claim or cross petition of a defendant or defendants do not entitle the party to any relief whatever, or the answer or reply do not constitute any defense to the cause of action, advantage must be taken of the defect by demurrer, and if no demurrer is interposed, by motion in arrest of judgment.”

On behalf of the committee I move its adoption.

MAJOR LACEY: It seems to me, in actual practice, the point complained of works to the advantage of court and counsel on both sides. The petition is filed; counsel are in doubt whether

there really is a cause of action. They demur and argue the matter. The court is advised and the demurrer is overruled. The party answers; the court has lost nothing, just had the benefit of that argument. They go on and try the case; then there is only one appeal required. Now, if by demurrer he must go to the Supreme Court, he cannot file his answer and have any further relief. It often occurs that you have a point of law in a petition that you may demur to, but that you have a good defense outside of that. Very frequently things stated in a petition are not true. It seems to me that to penalize the number of demurrers would increase the number of appeals, or would destroy the use of the demurrer altogether.

GEORGE W. SEEVERS: I second the motion made.

J. L. PARRISH: The trouble is with this proposition, there aren't any of us sure that our demurrer is good. It seems to me the law as it is has worked very well. If the court overrules a demurrer, you are not dead sure who is right, yet you may have a good defense as a matter of fact. You ought to have the right to present all the defenses you have. Your defenses may be good, and you ought not to be penalized and lose your defense in one respect, because you have not defended in another way. It seems to me that the Blanchard Act was passed to obviate this very difficulty. I might have also a good defense outside of the demurrer. I do not believe, as a matter of practice we want to do this.

JUSTICE DEEMER: A petition may be demurrable, because of its form or because of its substance. A motion in arrest will always lie, if the petition states no cause of action at all, but a demurrer will lie because of a defectively stated cause of action. With that distinction in mind, I think you will get a little more significance out of this recommendation. You do not have to demur at all, as I understand it. If that petition is insufficient to state a cause of action, you don't have to demur; if it states no cause of action at all, go ahead and try it out, and if you want to put an end to it, come in with your motion in arrest of judgment. Your failure to demur doesn't make it good. If you want to attack the form of a petition at any time, do it by demurrer and stand on

that demurrer. Then you are not hazarding anything, as far as I can see, except the defendant has all the advantage in the world and no disadvantage. You will note it says: "No pleading shall be held sufficient merely because of a failure to demur thereto."

WILLIAM MCNETT: I can remember very distinctly suffering an embarrassment on this proposition. I really think this proposition ought to be voted down. I should be gratified if I could support it. A demurrer is a short cut method of trying to dispose of a case in a short time and not much expense. It seems to me we ought to have the right to preserve the question that may be raised by this short cut method along with the facts in the case.

J. L. PARRISH: If I understand this situation, the course of procedure would be this: The petition is filed; I demur; my demurrer is overruled. I conclude to appeal it; they would get a judgment entered. I go to the Supreme Court, and I was mistaken about my proposition, I am through; I have got to pay that judgment. I do not get a chance to try it out on the facts, and the result will be that a demurrer never will be filed. You might just as well do away with filing a demurrer.

JUSTICE DEEMER: What is the purpose of a demurrer now?

MR. PARRISH: It really hasn't any purpose since the passage of the Blanchard Act. I have filed but two or three and have always regretted that I filed those. Now, we ought to, somewhere along the line be able to try our cases on the question of fact, and to raise the legal question somewhere as to whether the plaintiff as a matter of law has a good cause of action. We ought not to be required at our peril to determine for a client the question of whether or not the plaintiff has stated in his petition a good cause of action. It seems to me this ought to be defeated. It does not do us any good.

JUDGE R. L. PARRISH: As a matter of practice, the facts are that the District Courts over the State do not sustain demurrers to equity cases unless it is very clear. If you go to a District Court in this State with a demurrer in an equity case on a close proposition, he will say, we will try this case and when I get

through, I will know better what the law is and will pass on this proposition then. I tried a case on a demurrer about a month ago. The demurrer was sustained and that ended the case. If the court had overruled that demurrer, I never would have stood on it a minute, but would have tried the case. I had the evidence besides a legal defense.

JUSTICE DEEMER: I know a demurrer doesn't amount to anything now. I have seen a good many cases come to us, where the matter could have been settled on demurrer. There ought to be some way of working it out so that a man can challenge a legal proposition and feel that he is taking no hazard at all.

J. L. PARRISH: There is only one way in which it can be done successfully. It is a question whether it is practical. That is to allow an appeal from the ruling of the demurrer without entering judgment, and giving to the plaintiff or defendant, as the case may be, the right to try it on its merits.

JUDGE M. J. WADE: I think we ought to go a step further with this. This thing of having a petition filed which does not state a cause of action, a party makes an issue upon that which does not constitute a cause of action, and then goes to the expense of a five or six days' trial, and then goes in and files a motion in arrest of judgment—if I were doing anything with this, I would hold that the person who didn't demur waived his right to a motion in arrest.

Upon a vote duly taken, the fourth recommendation was declared lost.

JUSTICE DEEMER: Thinking we might not have enough to discuss, we proposed something for discussion. I think, however, with the consent of the other members of the committee, having had so much discussion, we will withdraw our recommendation at this time. The committee has had its usual success of getting none of its recommendations through.

We have a supplemental report here, which I read this forenoon, a substitute for Section 3538.

Senator Van Law, who is especially interested in this matter, is not here, and as there will be no session of the Legislature

until after the next Bar Meeting, I will ask, on behalf of the committee, to have this postponed until the next Bar Meeting.

There being no objection, it was so ordered.

F. F. DAWLEY: Mr. President, I move the adoption of the following amendment: Resolved that rule six of the by-laws be amended by adding thereto the following: "He (the Treasurer) shall furnish a bond in such sum and such conditions as the President and Secretary may prescribe, the cost of which shall be paid by the Association."

The motion to adopt was duly seconded and carried.

F. F. DAWLEY: I also wish to move the following resolution:

Resolved, That we extend our hearty thanks to the Bar and the people of Oskaloosa for their generous welcome and entertainment of this Association.

The motion to adopt was duly seconded and unanimously carried.

JUDGE M. J. WADE: One thing, I think, most of us overlook, and that is, that the success of an Association of this kind depends very largely upon the efforts of its officers. The thing most of us do not know anything about, is the amount of work they do.

I therefore move the thanks of this Association be extended to our retiring President, the retiring Treasurer, and Secretary, for their faithful and enthusiastic work in our interests as members of this Association.

The motion was duly seconded and unanimously carried.

PRESIDENT CARNEY: On the part of the retiring President, (and I think I voice the sentiment of the other officers of the Association,) I thank you heartily for the kindly forbearance you have shown, and many courtesies extended to us, during our respective terms of office. If you will pardon a word personal I may say, that owing to the death of Mr. Chas. M. Harl, the duty of Acting-President devolved upon me, during the years 1909-10, and by your kindness I was elected a year ago to the office of President of the Iowa State Bar Association. The duties of this

position have been pleasant; I have formed new acquaintances and cemented older friendships that will endure through life.

At the close of this session, I will request the Vice-President, Justice Deemer and Mr. F. F. Dawley to conduct the newly elected President to the Chair, and thus install him before we separate.

SENATOR SAUNDERS, the newly elected President, was accordingly escorted to the Chair and said:

Gentlemen of the Bar Association: I take it, on this hot afternoon, you desire to return to your homes as soon as may be. For that reason I shall be exceedingly brief at this time. First of all, I desire to thank you, one and all, for this very high honor you have conferred upon me. The bar has been the ambassador of civilization in all times, and to us is given a sacred responsibility. We owe a duty to our clients, but a higher one to our State and Nation, and I therefore appreciate more than I otherwise would, this great honor you have placed upon my shoulders. I only hope that I in the coming year may be as successful in the discharge of these duties which you have assigned me, as has been my predecessor, Senator Carney, of Marshalltown. I hope that we may be able to present for your delight and edification next year a program that shall be equal, if not superior to the one we had at this time.

Gentlemen, I again thank you.

JUDGE M. J. WADE: It was suggested in a statement I saw in a paper the other day, that at the State Bar Meeting in Illinois, its membership committee presented 2,000 new members at its meeting. I do hope special efforts will be made to enlarge our membership during the next year. I also believe it is the duty of the membership of our Association in their respective communities, to try and help the committee on membership in picking up the right kind of men to join the Association. I believe, with a little effort, we can add three or four hundred new members. The Bar Associations of this country are becoming great factors and we should make special efforts to enlarge our membership.

PRESIDENT SAUNDERS: I am glad to have the suggestion of

Judge Wade. I wish to say, I hope every member of this Association will be perfectly free to offer to the President such suggestions as he may desire for the success and welfare of the Association. The chairman of the Membership Committee has not yet been named and is to be hereafter designated by the President of the Association. I will make an appointment at an early date, and shall be glad to receive suggestions along this line. It was suggested by a member to my left, that the marvelous membership was due to the appointment of a sub-committee in every city in the State, and each member was required to bring in new members from his own community. I think that is a good suggestion.

Upon motion duly made, at 5 P. M., the Association adjourned *sine die*.

CONSTITUTION AND BY-LAWS
OF
THE IOWA STATE BAR ASSOCIATION

CONSTITUTION

ARTICLE I

NAME

SECTION 1. This Association shall be known as the Iowa State Bar Association.

ARTICLE II

OBJECT

SECTION 1. This Association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal education, and to cherish a spirit of brotherhood among the members thereof.

ARTICLE III

MEMBERSHIP

SECTION 1. The membership of this Association shall be composed, first, of the charter members present at the organization as shown by the roll and paying the annual dues; and, second, members may be hereafter admitted to the Association on application to and recommendation by the Committee on Membership, provided the applicant be recommended for admission by either the County Bar Association of the applicant's county or by three members of this Association in good standing.

ARTICLE IV

OFFICERS

SECTION 1. The officers of this Association shall be a President, Vice-President, Secretary, Librarian, and Treasurer, who shall be elected at each annual meeting by ballot, without the intervention of a nominating committee, and who shall each hold office until his successor is elected and qualified.

SEC. 2. The members adopting this Constitution shall at once organize

by electing officers and an Executive Committee, as provided in Article V hereof, to serve until the first annual meeting hereafter to be held.

ARTICLE V

EXECUTIVE COMMITTEE

SECTION 1. The business of the Association shall be managed and controlled by an Executive Committee composed of the President, who shall be ex-officio Chairman, and eleven other members, one from each Congressional District, to be nominated by the members of this Association present from each Congressional District at each annual meeting.

SEC. 2. Any committee, standing or special, may consider and take action upon any matter of business pending before it, by correspondence; the vote being taken in writing and duly entered of record upon the minutes of such committee, and when so taken and entered shall stand as the act of the committee.

ARTICLE VI

STANDING COMMITTEES

SECTION 1. There shall be the following standing committees, who shall be elected by the Executive Committee, from the body of the Association, at their first meeting hereafter to be held and at their first meeting succeeding each annual meeting of this Association, to-wit:

First. On Membership, to be composed of three.

Second. On Grievances, to be composed of five.

Third. On Law Reform, to be composed of seven.

Fourth. On Legal Education and Admission to the Bar, to be composed of five.

Fifth. On Legal Biography, to be composed of three.

ARTICLE VII

FEES AND DUES

SECTION 1. The admission fee shall be three dollars (\$3), payable in advance, and to accompany the application for admission.

SEC. 2. The annual membership dues shall be three dollars (\$3), payable at each annual meeting, and if not paid within sixty days thereafter the membership may be forfeited, and the name of the delinquent shall not appear upon the published roll of membership.

SEC. 3. The payment of the admission fee shall relieve the member from further payment until the next annual meeting thereafter held.

ARTICLE VIII

ANNUAL MEETINGS

SECTION 1. The annual meeting shall be held at such time as the Executive Committee may determine. The annual meeting for 1895 shall be held in the city of Des Moines, but thereafter the place of meeting shall be selected by the Executive Committee.

ARTICLE IX**HONORARY DELEGATES**

SECTION 1. This Association will at any time admit as honorary delegates not exceeding two from the Bar Association of any county in the State, they to be entitled to all the privileges of membership at such meeting, with the exception of the right to vote and hold office.

ARTICLE X**BY-LAWS**

SECTION 1. The Executive Committee is charged with the duty of adopting appropriate By-Laws, not inconsistent herewith, for the government and control of the officers, committees and the business of the Association. These By-Laws shall be, however, subject to change by the Association at any regular meeting.

ARTICLE XI**AMENDING THE CONSTITUTION**

SECTION 1. This Constitution may be amended at an annual meeting by an affirmative vote of not less than two-thirds of all the members present, but can be amended by a majority vote when the proposed amendment has been submitted to the last preceding annual meeting of the Association.

BY - L A W S

RULE I**MEETINGS**

SECTION 1. The regular annual meetings of the Association shall be held at such time and place as shall be fixed by the Executive Committee and the place shall be announced by the Executive Committee before the adjournment of the annual meeting prior thereto.

SEC. 2. Twenty-five of the active members of the Association shall constitute a quorum for the transaction of business.

RULE II**ORDER OF BUSINESS**

SECTION 1. At the hour appointed for the annual meeting, the President, or in his absence the Vice-President, shall take the chair and the Secretary shall proceed to call the roll and note the members present. In the absence of both the President and Vice-President, the members present shall elect a President pro tempore as soon as the Secretary shall announce the presence of a quorum. Should no quorum attend within the hour appointed for the meeting, the members present shall fix a time for which the meeting shall stand adjourned.

SEC. 2. The order of business at the annual meeting shall be as follows:

First. Calling the roll of members.

Second. Presentation of petitions, letters, memorials, remonstrances and other papers which may be referred to appropriate committees and otherwise disposed of without debate.

Third. Report of Committee on Membership.

Fourth. Admission of Members.

Fifth. Address of President.

Sixth. Reports from other Standing Committees.

Seventh. Nomination and Election of Officers.

Eighth. Unfinished Business.

Ninth. New Business.

Tenth. Motions and Resolutions.

Eleventh. Annual address at such time as Executive Committee may determine, and other addresses, as arranged by program.

Twelfth. Banquet (evening of the first day).

RULE III

THE PRESIDENT

SECTION 1. The presiding officer shall rigidly enforce all rules adopted for the government of the Association, shall preserve order and decorum and in the debates shall prevent personal reflections and confine members to the question under discussion, countersign all orders of the Secretary upon the Treasurer, and appoint all committees whose election is not otherwise provided for.

RULE IV

THE SECRETARY

SECTION 1. The Secretary shall keep a full and complete list of the members and records of the proceedings of the Association and of the Executive Committee, draw orders upon the Treasurer for all sums of money ordered by the Association to be paid, give all persons elected written notice of the election, and attend to such other duties as may be imposed upon him at any meeting of the Association.

SEC. 2. The Secretary shall within ninety days after the close of each annual meeting, cause to be printed and published in book form such number of copies of the proceedings as the President and Secretary shall determine, containing a complete record of all the proceedings, including all papers presented to or read before the Association, all toasts given at the annual banquet, the reports of each and all officers and committees; the Constitution and By-Laws of the Association, with all amendments thereto in their proper places, a list of all the officers and members of the Association from the beginning, including the committees named at each meeting, and any other matters he may deem of sufficient importance to find a place in the volume.

He shall also make an accurate, complete, modern and thorough index

of the proceedings, with cross references, etc., so that the matter contained in each volume may be rendered easily accessible; and preceding the index shall make and cause to be published a memorandum of all subjects referred to the committees, general and special, the subject of each and all of the annual addresses, giving author, and the subject and author of all papers read before the Association from its origin down to the time of the publication of the volume.

The same to be after the form and style of such memoranda as printed and published in the proceedings of the American Bar Association for the year 1898.

SEC. 3. In the published proceedings for the year 1901, he shall in addition to the regular index, make and publish a complete, accurate and thorough index, with usual cross references of all previous proceedings, giving volume or year and page of the proceedings where the matter referred to may be found.

SEC. 4. He shall receive in full compensation for services now or hereafter exacted of him, by by-law, rule, resolution, or vote of the Association, the sum of two hundred dollars per annum.

SEC. 5. All contracts for the publication of the proceedings shall be executed by the President and Secretary.

SEC. 6. Immediately on publication, the Secretary shall mail to each active member of the Association one copy of the proceedings; and the remainder shall be kept for sale and exchange. Exchanges may be made with such societies and organizations as the Executive Committee may direct; and the Executive Committee shall fix the price at which each volume may be sold.

RULE V

THE LIBRARIAN

SECTION 1. The Librarian shall receive from the Secretary all the printed literature of the Association, except a sufficient number of the proceedings of each year to distribute among the members of the Association, and shall preserve the same, and he is hereby directed to mail to each public library in the State of Iowa a copy of the proceedings of each year and to exchange proceedings with other Associations.

RULE VI

THE TREASURER

SECTION 1. The Treasurer shall collect all moneys due the Association, keep correct accounts of the receipts and expenditures, and also an account with each member, pay all orders drawn by the Secretary and countersigned by the President, and make a full and correct report of the condition of the treasury to the Association at each annual meeting and at any other time when requested by the Executive Committee, and perform such other duties as the Association may require. He shall furnish a bond

in such sum and on such conditions as the President and Secretary may prescribe, the cost of which shall be paid by the Association.

RULE VII

OFFICERS AND THEIR ELECTION

SECTION 1. The President, Vice-President, Secretary, Treasurer and Executive Committee shall be elected at each annual session and hold their offices for one year and until their respective successors be duly elected.

SEC. 2. All elections for officers shall be by ballot, and a majority of the whole number of votes cast shall be requisite to the election of a candidate.

SEC. 3. Nominations shall be made to the annual meeting immediately preceding the time fixed for election.

SEC. 4. No member shall be entitled to vote at an election for officers until all arrears due by said member to the Association shall be paid.

RULE VIII

MEMBERS

SECTION 1. No person shall be admitted to membership unless he is a member of the Bar of the State of Iowa, in good standing and has been recommended as by the Constitution of this Association provided.

SEC. 2. No person shall be considered a member unless he shall have signed the roll and paid into the hands of the Treasurer the annual dues provided by the Constitution.

SEC. 3. Any gentleman learned in the law may be elected to honorary membership in the same manner as is required in the election to active membership.

SEC. 4. Honorary members shall be entitled to all the privileges of active members, excepting serving on committees, voting and holding office.

RULE IX

STRIKING FROM THE ROLL

SECTION 1. Any member who may be indebted to the Association in any sum shall receive written notice from the Treasurer, and if said member does not within two months after such notice pay his indebtedness, he shall be reported by the Treasurer to the President and Secretary and, upon the concurrent action of a majority of such officers, he shall forfeit his membership, and shall be reinstated only upon the payment of all his indebtedness to the Association, and the concurrence of a majority of the members present at the annual meeting of the Association next following such settlement.

RULE X

COMMITTEES

SECTION 1. Besides the officers provided for in the charter, there shall

be elected annually by the Executive Committee at the session immediately following such annual meeting, the following standing committees: Membership, Legal Education and Admission to the Bar, Grievances, Law Reform, Biography and History.

EXECUTIVE

SEC. 2. The President shall be ex-officio Chairman of the Executive Committee, which shall perform the duties in the manner specified in the charter. The Executive Committee shall annually select three persons, each of whom shall prepare and read at the annual meeting of this Association a paper upon subjects to be designated by the Executive Committee.

GRIEVANCES

SEC. 3. All complaints or charges of professional misconduct against any member shall in the first instance be made to this committee, who shall first investigate the same and report thereon. If such complaint or charges appear to be well founded this committee shall report to the Association what action in their judgment shall be taken thereon, whereupon the Association may, after a fair hearing, upon due notice to the accused, proceed to suspend or expel said member, and if the charge be such as comes in the summary jurisdiction of the courts, may order proceedings to be instituted and present the same against the party or parties accused, and shall appoint a committee of prosecution for each particular case.

LAW REFORM

SEC. 4. Any and all legislation proposed relative to the enactment of new laws or changes in those prevailing, shall be referred to this committee who shall examine and report its action upon the case.

LEGAL BIOGRAPHY AND HISTORY

SEC. 5. This committee shall receive all papers referred to them and shall collect all data obtainable touching the past history of the Bar of Iowa and the members thereof, arrange the same in order for publication, and report the same to the Association for its further order and action.

THE MARSHAL

SEC. 6. The Executive Committee shall appoint a Marshal, who shall, under the general control of the President, assist in preserving order and perform the duties of a sergeant-at-arms of a deliberative body.

AUDITING

SEC. 7. The President shall at least ten days prior to each annual meeting, appoint an Auditing Committee of three members, at least two of whom shall be residents of the town or city where the Treasurer resides. To this committee shall be referred all reports of officers, and it shall be its duty to examine all books of accounts, vouchers and other matters relating to the financial management and condition of the Association.

RULE XI

RULES OF ORDER

SECTION 1. No motion, resolution or amendment (except to postpone, to lay on the table, or refer to a committee) shall be debatable unless offered in writing, seconded and stated by the President; and after it has been debated the President shall again state it before any vote shall be taken upon it.

SEC. 2. Unless specified, Roberts' Rules of Order shall be the guide and authority, when applicable, on all questions arising in the Association.

RULE XII

THE BY-LAWS

SECTION 1. Any article or section of the By-Laws may be temporarily suspended by a unanimous vote of the members present.

SEC. 2. By-Laws may be enacted, amended or repealed by a majority vote of the members present at any regular meeting.

RULE XIII

SECTION ON TAXATION

SECTION 1. There is hereby created a Section on Taxation, such Section to consist of six members, two of whom shall be annually appointed by the Executive Committee to serve for three years, together with such other members of the Association as may identify themselves with said Section to aid the work thereof. Of those first appointed under this rule, two shall be appointed for one year, two for two years and two for three years each.

SEC. 2. Said Section will immediately upon its appointment organize by electing from the six members so appointed the following officers: President, Vice-President and Secretary, the duties of which shall be those usually performed by such officers.

SEC. 3. Said Section shall have a meeting annually in connection with the annual meeting of this Association, and as a part of the same, and in the arrangement of the program of the Association a definite time, not exceeding one morning or afternoon session, shall be set apart to the proceedings of this Section, and at such time the meeting will be presided over by the President of this Section.

SEC. 4. By the concurrent action of the President of the Section and at least a majority of the Executive Committee of the Association, this Section shall be authorized to expend such sums of money as may reasonably appear to be necessary in collecting statistics, conducting investigation or in any other manner aiding the work of the Section.

SEC. 5. The proceedings of this Section shall be published under an appropriate heading and as a part of the proceedings of this Association.

LIST OF OFFICERS AND MEMBERS OF THE VARIOUS COMMITTEES SINCE THE ORGANIZATION OF THE IOWA STATE BAR ASSOCIATION

1894

Temporary Chairman.....EMLIN MCCLAIN, *Iowa City*
Temporary Secretary.....JAMES W. BOLLINGER, *Davenport*

1895

President.....A. J. MCCRARY, *Keokuk*
Vice-President.....L. G. KINNE, *Des Moines*
Secretary.....JAMES W. BOLLINGER, *Davenport*
Treasurer.....JOHN N. BALDWIN, *Council Bluffs*

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. B. Bane, New Hampton; Fifth District, D. E. Voris, Marion; Sixth District, L. C. Blanchard, Okaloosa; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, D. C. Chase, Webster City; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Geo. W. Wakefield, Sioux City; H. O. Weaver, Wapello.

Legal Biography.—George G. Wright, Des Moines; H. S. Winslow, Newton; N. M. Hubbard, Cedar Rapids.

To Prepare By-Laws.—A. J. McCrary, Keokuk; E. S. Huston, Burlington; L. C. Blanchard, Okaloosa.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Bose, Jefferson; T. B. Perry, Albion; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Auditing.—M. J. Wade, Iowa City; E. S. Huston, Burlington; Thomas A. Cheeshire, Des Moines.

1896

President.....	L. G. KINNE, <i>Des Moines</i>
Vice-President.....	J. H. HENDERSON, <i>Indianola</i>
Secretary.....	JAMES W. BOLLINGER, <i>Davenport</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. O. Weaver, Wapello; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. B. Bane, New Hampton; Fifth District, George W. Burnham, Vinton; Sixth District, H. S. Winslow, Newton; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, P. L. Sever, Stuart; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—George G. Wright, Des Moines; H. S. Winslow, Des Moines; N. M. Hubbard, Cedar Rapids.

Constitution and By-Laws.—Charles M. Harl, Council Bluffs; Milton Bemley, Iowa City; C. H. Hatch.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Rose, Jefferson; T. B. Perry, Albia; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; James G. Day, Des Moines.

1897

President.....	J. H. HENDERSON, <i>Indianola</i>
Vice-President.....	M. J. WADE, <i>Iowa City</i>
Secretary.....	NATHAN E. COFFIN, <i>Des Moines</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, Charles D. Leggett, Fairfield; Second District, E. M. Sharon, Davenport; Third District, J. J. McCarthy, Dubuque; Fourth District, J. H. McConlogue, Mason City; Fifth District, George W. Burnham, Vinton; Sixth District, Chas. R. Clark, Montezuma; Seventh District, John Shortley, Perry; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—H. S. Winslow, Newton; C. C. Nourse, Des Moines; A. J. McCrary, Keokuk.

Constitution and By-Laws.—Milton Remley, Iowa City; James W. Bollinger, Davenport; T. M. Fee, Centerville.

Law Reform.—A. B. Cummins, Des Moines; John Cliggett, Mason City; L. C. Blanchard, Oskaloosa; J. H. Preston, Cedar Rapids; P. W. Burr, Charles City; C. A. Carpenter, Columbus Junction; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. A. Park, Des Moines; M. J. Tobin, Vinton.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; P. L. Sever, Stuart; C. G. Saunders, Council Bluffs; W. J. Roberts, Keokuk.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; J. H. McConlogue, Mason City.

Program.—E. H. Crocker, Cedar Rapids; M. J. Wade, Iowa City; F. W. Eichelberger, Bloomfield.

1898

President.....M. J. WADE, *Iowa City*
 Vice-President.....JAMES O. CROSBY, *Garnaville*
 Secretary.....NATHAN E. COFFIN, *Des Moines*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, W. J. Roberts, Keokuk; Second District, James H. Feenan, Marengo; Third District, J. A. Rogers, Clarion; Fourth District, Wm. E. Fuller, West Union; Fifth District, E. H. Crocker, Cedar Rapids; Sixth District, Charles B. Clark, Montezuma; Seventh District, J. H. Henderson, Indianola; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winslow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. C. Blanchard, Oskaloosa; J. P. Steele, Winterset; C. A. Carpenter, Columbus Junction; J. H. Preston, Cedar Rapids; T. G. Harper, Burlington; R. F. Jordan, Boone; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—Lewis Miles, Corydon; C. E. Albrook, Eldora; Wm. H. Baily, Des Moines; C. G. Saunders, Council Bluffs; J. J. McCarthy, Dubuque.

Delegates to American Bar Association.—H. E. Deemer, Red Oak; C. A. Dudley, Des Moines; J. M. Parsons, Rock Rapids.

Program.—J. E. E. Markley, Mason City; W. B. Quarton, Algona; W. D. Evans, Hampton.

 1899

President.....JAMES O. CROSBY, *Garnaville*.
 Vice-President.....L. C. BLANCHARD, *Oskaloosa*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, G. L. Johnson, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Ellison, Anamosa; Sixth District, David Ryan, Newton; Seventh District, J. P. Steele, Winterset; Eighth District, L. C. Meehem, Centerville; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winalow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. C. Mabry, Centerville; E. S. Huston, Burlington; J. R. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—J. J. McCarthy, Dubuque; A. J. House, Maquoketa; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—Alphonse Matthews, Dubuque; J. H. Henderson, Indianola; W. B. Quarton, Algona.

Program.—J. H. Quick, Sioux City; J. E. E. Markley, Mason City; E. C. Roach, Rock Rapids.

 1900

President.....L. C. BLANCHARD, *Oskaloosa*
 Vice-President.....J. J. MCCARTHY, *Dubuque*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, Fred Heinz, Davenport; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Ellison, Anamosa; Sixth District, Robert M. Haines, Grinnell; Seventh District, C. P. Holmes, Des Moines; Eighth District, J. C. Mabry, Centerville; Ninth District, Thomas Arthur, Logan; Tenth District, Wesley Martin, Webster City; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. P. Lyman, Grinnell; E. S. Huston, Burlington; J. A. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—George C. Scott, Le Mars; Charles Baker, Iowa City; J. M. Read, Des Moines.

Grievances.—A. J. House, Maquoketa; L. L. Livingston, Corydon; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—George W. SeEVERS, Oskaloosa; J. C. Sherwin, Mason City; James O. Crosby, Garnaville.

Program.—A. E. Swisher, Iowa City; J. H. Preston, Cedar Rapids; Robert M. Haines, Grinnell.

1901

President.....	J. J. MCCARTHY, <i>Dubuque</i>
Vice-President.....	J. H. MCCONLOGUE, <i>Mason City</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, S. F. Smith, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. A. Hoyt, Fayette; Fifth District, J. H. Preston, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. D. Gamble, Knoxville; Eighth District, J. C. Mabry, Centerville; Ninth District, H. W. Byers, Harlan; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—H. E. Deemer, Red Oak; J. A. Rogers, Clarion; E. M. Sharon, Davenport.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. K. Evans, Corydon.

Membership.—Jacob Sims, Council Bluffs; M. W. Beach, Carroll; E. M. Carr, Manchester.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; E. M. Carr, Manchester; Erastus B. Soper, Emmetsburg; Wm. E. Fuller, West Union.

Delegates to American Bar Association.—E. E. McElroy, Ottumwa; L. C. Blanchard, Oskaloosa; C. C. Cole, Des Moines.

Program.—C. G. Saunders, Council Bluffs; H. W. Byers, Harlan.

1902

President.....J. H. McCONLOGUE, *Mason City*
 Vice-President.....ROBERT M. HAINES, *Grinnell*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, Ernest Kelley, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Geo. Dunham, Manchester; George F. Henry, Des Moines.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville; H. M. Remley, Anamosa.

Membership.—J. J. McCarthy, Dubuque; M. W. Beach, Carroll; C. W. Mullan, Waterloo.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; L. L. Ainsworth, West Union; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—A. E. Swisher, Iowa City; J. H. McConlogue, Mason City; W. L. Eaton, Osage.

Program.—J. H. McConlogue, Mason City; E. M. Carr, Manchester; J. C. Longueville, Dubuque; M. C. Matthews, Dubuque.

1903

President.....	ROBERT M. HAINES, <i>Grinnell</i>
Vice-President.....	GEO. W. WAKEFIELD, <i>Sioux City</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, E. E. McElroy, Ottumwa; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, A. N. Boeye, Webster City; Eleventh District, E. C. Boach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville.

Membership.—Wm. H. Baily, Des Moines; J. P. Lyman, Grinnell; C. G. Saunders, Council Bluffs.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; J. J. Clark, Mason City; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—M. J. Wade, Iowa City; W. L. Eaton, Osage; H. M. Remley, Anamosa.

Program.—Robert M. Haines, Grinnell; J. P. Steele, Winterset; C. A. Bishop, Des Moines.

Commission on Taxation.—Charles A. Clark, Cedar Rapids; C. G. Saunders, Council Bluffs.

1904

President.....	GEO. W. WAKEFIELD, <i>Sioux City</i>
Vice-President.....	A. E. SWISHER, <i>Iowa City</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	JESSE F. STEVENSON, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, Fred Heinz, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, H. T. Reid, Cresco; Fifth District, J. M. Grimm, Cedar Rapids;

Sixth District, E. E. McElroy, Ottumwa; Seventh District, Wm. H. Baily, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, Henry B. Holzman, Guthrie Center; Tenth District, Carl F. Kuehnle, Denison; Eleventh District, E. C. Roach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; J. F. Clyde, Osage; William E. Miller, Bedford.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Bemley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—M. A. Roberts, Ottumwa; Wm. H. Baily, Des Moines; J. P. Lyman, Grinnell.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; W. B. Quarton, Algona; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—C. A. Dudley, Des Moines; E. M. Carr, Manchester; W. B. Quarton, Algona.

Program.—Geo. W. Wakefield, Sioux City; W. S. Withrow, Mount Pleasant; E. E. McElroy, Ottumwa.

Commission on Taxation.—J. H. McConlogue, Mason City; J. C. Mabry, Centerville.

1905

President.....	A. E. SWISHER, <i>Iowa City</i>
Vice-President.....	WM. H. BAILY, <i>Des Moines</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	JESSE F. STEVENSON, <i>Des Moines</i>

COMMITTEES

Executive.—First District, W. M. Walker, Keosauqua; Second District, John F. Devitt, Muscatine; Third District, S. M. Weaver, Iowa Falls; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, E. E. McElroy, Ottumwa; Seventh District, C. A. Dudley, Des Moines; Eighth District, P. C. Preston, Creston; Ninth District, C. E. Dean, Glenwood; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—George W. Wakefield, Sioux City; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Constitution and By-Laws.—J. A. Rogers, Clarion; B. A. Yonker, Des Moines; Wm. McNett, Ottumwa.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—Wm. H. Baily, Des Moines; M. A. Roberts, Ottumwa; J. P. Lyman, Grinnell.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—Geo. W. Wakefield, Sioux City; James W. Bollinger, Davenport; M. A. Roberts, Ottumwa.

Program.—C. A. Dudley, Des Moines; A. E. Swisher, Iowa City; George F. Henry, Des Moines.

Commission on Taxation.—E. E. McElroy, Ottumwa; James C. Davis, Des Moines.

Delegates to the World's Congress of Lawyers at St. Louis, Mo.—At Large, S. M. Weaver, Iowa Falls; At Large, H. M. Towner, Corning; First District, H. M. Eicher, Washington; Second District, Wm. Hoffman, Muscatine; Third District, J. J. McCarthy, Dubuque; Fourth District, James O. Crosby, Garnaville; Fifth District, J. L. Carney, Marshalltown; Sixth District, L. C. Blanchard, Oskaloosa; Seventh District, C. C. Cole, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, H. E. Deemer, Red Oak; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Scott M. Ladd, Sheldon.

1906

President.....WM. H. BAILY, *Des Moines*
 Vice-President.....H. M. TOWNER, *Corning*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....JESSE F. STEVENSON, *Des Moines*

COMMITTEES

Executive.—W. H. Baily, ex-officio chairman; First District, W. M. Keeley, Washington; Second District, J. F. Devitt, Muscatine; Third District, Charles W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. W. Willett, Tama; Sixth District, W. G. Clements, Newton; Seventh District, Carroll Wright, Des Moines; Eighth District, William E. Crum, Bedford; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, J. E. Wickham, Garner; Eleventh District, F. F. Faville, Storm Lake.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Law Reform.—Charles A. Clark, Cedar Rapids; H. M. Remley, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; R. M. Wright, Ft. Dodge; James W. Bollinger, Davenport.

Membership.—C. L. Powell, Des Moines; W. J. Roberts, Keokuk; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—Charles A. Dudley, Des Moines; J. H. McConlogue, Mason City; M. J. Wade, Iowa City.

Commission on Taxation.—J. H. McConlogue, Mason City (elected 1903); J. C. Mabry, Centerville (elected 1903); E. E. McElroy, Ottumwa (elected 1904); James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905).

1907

President.....H. M. TOWNER, *Corning*
 Vice-President.....D. D. MURPHY, *Elkader*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....CHARLES S. WILCOX, *Des Moines*

COMMITTEES

Executive.—H. M. Towner, ex-officio chairman; First District, C. A. Carpenter, Columbus Junction; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, W. B. Lewis, Montezuma; Seventh District, C. G. Lee, Ames; Eighth District, W. E. Miller, Bedford; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, Wesley Martin, Webster City; Eleventh District, M. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; E. M. Sharon, Davenport.

Law Reform.—James W. Bollinger, Davenport; Charles A. Clark, Cedar Rapids; H. M. Remley, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; R. M. Wright, Ft. Dodge.

Membership.—C. S. Grilk, Davenport; C. L. Powell, Des Moines; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—W. H. Baily, Des Moines; A. E. Swisher, Iowa City; M. A. Walsh, Clinton.

Commission on Taxation.—James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905); W. O. McElroy, Newton (elected to fill unexpired term of E. E. McElroy who was elected in 1904); C. P. Smith, Mason City (elected 1906); A. R. Wells, Corning (elected 1906).

1908

President.....	D. D. MURPHY, <i>Elkader</i>
Vice-President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—D. D. Murphy, ex-officio chairman; First District, Charles J. Wilson, Washington; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, A. N. Hobson, West Union; Fifth District, James H. Crosby, Cedar Rapids; Sixth District, Henry Silwold, Newton; Seventh District, B. L. Parrish, Des Moines; Eighth District, Thomas L. Maxwell, Creston; Ninth District, Charles M. Harl, Council Bluffs; Tenth District, Carl F. Kuehnle, Denison; Eleventh District, W. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; W. B. Lewis, Montezuma.

Law Reform.—M. J. Wade, Iowa City; George W. Dunham, Manchester; J. L. Carney, Marshalltown; H. M. Remley, Anamosa; J. H. Henderson, Indianola; W. D. Evans, Hampton; C. A. Dudley, Des Moines.

Membership.—F. C. Platt, Waterloo; Charles Grilk, Davenport; C. L. Powell, Des Moines.

Grievances.—W. B. Quarton, Algona; E. H. Crocker, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa; Wesley Martin, Webster City.

Delegates to the American Bar Association.—H. M. Towner, Corning; E. M. Sharon, Davenport; Shirley Gilliland, Glenwood.

Program.—D. D. Murphy, Elkader; H. M. Towner, Corning; James W. Bollinger, Davenport.

Uniform Laws.—Charles G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; William H. Baily, Des Moines; A. E. Swisher, Iowa City; L. C. Blanchard, Oskaloosa.

1909

President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Vice-President.....	CHARLES M. HARL, <i>Council Bluffs</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—J. W. Bollinger, ex-officio chairman; First District, Marsh W. Bailey, Washington; Second District, A. J. House, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, Charles E. Scholz, Gut

tenberg; Fifth District, J. L. Carney, Marshalltown; Sixth District, M. A. Roberts, Ottumwa; Seventh District, J. K. Macomber, Des Moines; Eighth District, Lloyd Thurston, Osceola; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, Dwight G. McCarty, Emmetaburg; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Charles Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. R. Lewis, Montezuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; J. L. Carney, Marshalltown; H. O. Weaver, Wapello; Wm. McNett, Ottumwa; J. A. Howe, Des Moines; C. W. Mullan, Waterloo; H. K. Evans, Corydon.

Membership.—J. H. Egermayer, Marshalltown; J. K. Macomber, Des Moines; O. B. Courtright, Waterloo.

Grievances.—H. M. Towner, Corning; J. D. Gamble, Knoxville; J. C. Mabry, Centerville; W. B. Quarton, Algona; W. R. Green, Audubon.

Delegates to American Bar Association.—D. D. Murphy, Elkader; J. F. Devitt, Muscatine; Henry Vollmer, Davenport.

1910

President.....	CHARLES M. HARL, <i>Council Bluffs</i>
Vice-President.....	J. L. CARNEY, <i>Marshalltown</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive.—C. M. Harl, Council Bluffs, ex-officio chairman; First District, Hazen I. Sawyer, Keokuk; Second District, J. F. Devitt, Muscatine; Third District, A. J. Edwards, Waterloo; Fourth District, D. D. Murphy, Elkader; Fifth District, J. W. Willett, Tama City; Sixth District, H. G. Lyman, Grinnell; Seventh District, Jesse A. Miller, Des Moines; Eighth District, C. J. Lewis, Mt. Ayr; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, W. W. Goodykoontz, Boone; Eleventh District, W. M. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Chas. Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. R. Lewis, Montezuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; Jesse A. Miller, Des Moines; Wm. McNett, Ottumwa; J. L. Carney, Marshalltown; J. J. Clark, Mason City; L. H. Harpel, Boone; W. P. Briggs, Sheldon.

Grievances.—H. M. Towner, Corning; T. S. Stevens, Hamburg; H. E. Taylor, Waukon; Chas. S. Bradshaw, Des Moines; W. D. Milligan, Guthrie Center.

Uniform Laws.—Chas. G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; M. J. Wade, Iowa City; Wm. H. Baily, Des Moines; C. J. Wilson, Washington.

Program.—C. M. Harl, Council Bluffs; J. W. Bollinger, Davenport; J. L. Carney, Marshalltown.

Delegates to American Bar Association.—J. W. Bollinger, Davenport; S. M. Weaver, Iowa Falls; W. D. Milligan, Guthrie Center.

 1911

President.....	J. L. CARNEY, <i>Marshalltown</i>
Vice-President.....	C. G. SAUNDERS, <i>Council Bluffs</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive Committee.—J. L. Carney, ex-officio, chairman; First District, Marsh W. Bailey, Washington; Second District, J. P. Devitt, Muscatine; Third District, Franklin C. Platt, Waterloo; Fourth District, B. W. Newberry, Strawberry Point; Fifth District, J. H. Egermayer, Marshalltown; Sixth District, M. A. Roberts, Ottumwa; Seventh District, W. W. Cardell, Perry; Eighth District, W. D. Evans, Hampton; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, W. W. Goodykoontz, Boone; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Chas. N. Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—W. B. Lewis, Montezuma; J. O. Crosby, Garnaville; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; Carroll Wright, Des Moines; M. A. Roberts, Ottumwa; J. J. Clark, Mason City; W. P. Briggs, Sheldon; A. N. Hobson, West Union; C. H. Van Law, Marshalltown.

Membership.—Frank Nash, Oskaloosa; Frank S. Dunshee, Des Moines; J. H. Egermayer, Marshalltown.

Grievances.—H. M. Towner, Corning; T. S. Stevens, Hamburg; A. Chapin, McGregor; Chas. S. Bradshaw, Des Moines; W. D. Milligan, Guthrie Center.

Delegates to American Bar Association.—J. L. Carney, Marshalltown; J. B. Weaver, Jr., Des Moines; F. F. Faville, Storm Lake.

Program.—J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Jas. A. Devitt, Oskaloosa.

 1912

President.....	C. G. SAUNDERS, <i>Council Bluffs</i>
Vice-President.....	H. E. DEEMER, <i>Red Oak</i>
Secretary.....	H. C. HORACK, <i>Iowa City</i>
Treasurer.....	FRANK T. NASH, <i>Oskaloosa</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive Committee.—C. G. Saunders, ex-officio, chairman; First District, E. D. Morrison, Washington; Second District, H. C. Horack, Iowa City; Third District, G. W. Dunham, Manchester; Fourth District, J. H. McConlogue, Mason City; Fifth District, H. M. Remley, Anamosa; Sixth District, W. R. Lewis, Montezuma; Seventh District, J. H. Henderson, Indianola; Eighth District, L. H. Mattox, Shenandoah; Ninth District, O. W. Witham, Greenfield; Tenth District, J. W. Morse, Estherville; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—S. M. Ladd, Des Moines; E. B. Evans, Des Moines; Ralph Otto, Iowa City; H. J. Wilson, Burlington; J. C. France, Tipton.

Legal Biography.—C. J. Wilson, Washington; W. R. Lewis, Montezuma.

Law Reform.—E. B. Evans, Des Moines; J. J. Clark, Mason City; M. A. Roberts, Ottumwa; C. H. Van Law, Marshalltown; E. W. Weeks, Guthrie Center; Carroll Wright, Des Moines; A. N. Hobson, West Union.

Membership.—A. T. Cooper, Cedar Rapids; Frank S. Dunshee, Des Moines; James A. Devitt, Okaloosa.

Grievances.—J. B. Weaver, Jr., Des Moines; S. B. Stevens, Hamburg; John McCoy, Okaloosa.

Delegates to American Bar Association.—H. C. Horack, Iowa City.

Program.—C. G. Saunders, Council Bluffs; H. E. Deemer, Red Oak.

ANNUAL ADDRESSES

1895. L. G. KINNE—"How the Supreme Court Disposes of Cases."
1896. JOHN BARTON PAYNE—"The Legal Profession. Its Opportunities and Obligations."
1897. JOHN GIBBONS—"Security Under the Law is the Shaft and Shield of the Republic."
1898. H. C. TOMPKINS—No address.
1899. J. H. MCCONLOGUE—"The American Lawyer: His Obligations and Opportunities."
1900. JOHN L. WEBSTER—"Has the United States a Duty and a Destiny to Fulfil in China?"
1901. SMITH MCPHERSON—"The Recent Insular Tariff Decisions by the Supreme Court of the United States."
1902. PAUL E. CARPENTER—"Some of the Legal Phases of Insanity."
1903. DAVID J. BREWER—"The Triumph of Justice."
1904. No address.
1905. EMLIN MCCLAIN—"Limitations on Federal Power in the Government of Territories."
1906. JOHN CAMPBELL—"Freedom of the Executive in Exercising Governmental Functions from Control by the Judiciary."
1907. HANNIS TAYLOR—"The Science of Jurisprudence."
1908. GEORGE R. PECK—"The March of the Constitution."
1909. JOHN H. WIGMORE—"The Science of Criminology—Rules of Evidence in Criminal Cases."
1910. C. S. THOMAS—"Justice Delayed is Justice Denied."
1911. JOHN BURKE—"Employers' Liability and Workingmen's Compensation Acts."

PAPERS READ

1896

L. G. KINNE—*“Procedure and Methods of the Courts of Final Resort of the Republic of Mexico, the United States of America, and of the Several States and Territories of the Union.”*

1897

J. H. HENDERSON—*“The Enactment of Law; its Observance and Enforcement.”*

1898

M. J. WADE—*“The Association and its Objects.”*

1899

JOHN M. READ—*“Trusts.”*

D. D. MURPHY—*“Some Proposed Reforms in the Administration of the Criminal Law.”*

JAS. O. CROSBY—*President’s Address.*

THOMAS A. CHESHIRE—*“Proposed Reforms Relating to the Bench.”*

SCOTT M. LADD—*“Should Expert Witnesses be appointed by the Court, or should their Selection be left to Litigants?”*

1900

S. F. PROUTY—*“Majority Verdicts in Civil Actions.”*

MATTHEW MATTHEWS—*“The Ideal Trial Lawyer.”*

L. C. BLANCHARD—*“The Practice in the Nisi Prius Courts.”*

GEORGE H. CABE—*“Should we have an Additional Court of Appeals?”*

1901

CHARLES A. CLARK—*“The Law Reformer.”*

J. C. MABEY—*“What Salaries should our Supreme and District Judges Receive?”*

J. J. MCCARTHY—*“Perjury in Judicial Proceedings.”*

FRANKLIN C. PLATT—*“The Lawyer’s Duty in Respect to Himself and his Client.”*

GEORGE H. CABE—*“The Lawyer’s Duty in Respect to Himself and the Court.”*

C. W. BINGHAM—"The Lawyer's Duty in Respect to Himself and the Client of His Adversary."

E. M. CARR—"Insanity as a Defense to Crime."

1902

M. J. WADE—"The Use and Abuse of Expert Evidence."

H. M. REMLEY—"Should the Marriage of Feeble Minded and Degenerates be Prohibited by Law?"

J. H. McCONLOGUE—"Justice Samuel F. Miller."

H. S. RICHARDS—"Ought our Laws be so Amended as to Exempt from Taxation Moneys and Credits, and Other Forms of Property Easily Concealed?"

A. E. SWISHER—"Should the Law Providing for the Collection of Taxes be Changed so as to Enforce by Additional Penalty, or Partial Confiscation, the Assessments of Moneys and Credits which now Escape Taxation?"

GEORGE W. WAKEFIELD—"The Need of Law to Govern the Trial of Equity Cases."

E. E. McELROY—"Would the Adoption of a Law for the Taxation of Mortgages and Relieving the Real Estate Covered by Mortgages from so much of the Burden of Taxation be Desirable?"

1903

F. F. DAWLEY—"Submissions to the Supreme Court under the New Statute."

W. H. C. JACQUES—"What should be Deemed Indebtedness Within the Meaning of Constitutional and Statutory Provisions Limiting the Amount thereof which Municipalities may Incur?"

WM. McNETT—"What should be Deemed Indebtedness Within the Meaning of Constitutional and Statutory Provisions Limiting the Amount thereof which Municipalities may Incur?"

1904

GEO. W. WAKEFIELD—President's Address.

M. L. TEMPLE—"How Far are Labor Unions Liable for the Acts of their Members?"

WM. H. BAILY—"The Control of Public Utilities."

CHAR. A. CLARK—"Municipal Government."

1905

A. E. SWISHER—"An International Court."

W. H. McHENRY—"Reformation of Criminal Practice."

CHAR. NOBLE GREGORY—"The American Lawyers and their Training."

R. M. HAINES—"Statistical Data from Official Reports."

W. E. FULLER—"Ethical Reform."

E. E. McELROY—"Double Taxation: Some Remedies Attempted."

FRANK I. HERRIOTT—"Are Moneys and Credits Appropriate Objects of Taxation?"

1906

D. D. MURPHY—"The Divorce Problem and Recent Decisions of the United States Supreme Court."

W. H. BAILY—"A Problem in the Control of Business Corporations."

S. M. WEAVER—"Salus Populi Suprema Lex."

1907

H. M. TOWNER—"Reformatory and Remedial Legislation."

WALTER I. SMITH—"The Nation, and Local Self Government."

JAMES J. CROSSLEY—"The Legal Aspects of Primary Election Laws."

CHARLES G. SAUNDERS—"The Indeterminate Sentence Law and Parole System."

BYRON W. NEWBERRY—"Pure Food Laws."

C. C. COLE—"A Duty Owing by the Members of the Bar of Iowa to its Supreme Court."

1908

JAMES G. BERRYHILL—"The Des Moines Plan of Municipal Government."

D. D. MURPHY—"The Growth of the Democratic Principle; and the Initiative and Referendum—its Latest Institutional Form."

A. N. HOBSON—"The Case Lawyer."

H. M. TOWNER—"A Proposed Code of Professional Ethics."

HORACE E. DEEMER—"Proposed Reforms in Criminal Procedure."

CHARLES M. HART—"Constitutional Limitations and their Observance."

1909

H. CLAUDE HORACK—"Tendencies in Legal Education."

JAMES W. BOLLINGER—"Upward Tendencies in our Proposed Reforms."

B. I. SALINGER—"Should the Method of Selecting our Judiciary be Changed?"

1910

S. M. WEAVER—"The Rules."

J. J. CLARK—"The Present Status and Outlook of the Legal Profession."

M. A. ROBERTS—"The Problem of Industrial Accidents."

J. L. CARNEY—"Ideals and Uses of the State Bar Association."

1911

JOHN C. SHERWIN—"The Lawyer as a Patriot."

F. F. DAWLEY—"Particularist Society."

J. L. CARNEY—"John Marshall."

W. R. LEWIS—"The Law."

RALPH OTTO—"A Practical Legal Education."

MEMORANDA OF SUBJECTS REFERRED TO COMMITTEES

Recommendation of Librarian respecting reprinting Proceedings of Iowa State Bar Association from 1874 to 1878.

Referred to H. E. Deemer, W. R. Lewis, and B. M. Haines, pp. 18, 86.

Resolution with respect to the Collateral Inheritance Tax, making it special order immediately after President's Address, p. 155.

Selection of place for holding the next meeting of the Association.

Referred to C. G. Saunders, and H. M. Bemley, p. 184.

Recommendation of Committee on Law Reform respecting Employers' Liability and Workingmen's Compensation.

Postponed to next meeting, p. 187.

Resolution respecting Plan of Organisation for the Relief of the Supreme Court.

Referred to M. J. Wade, William McNett, George W. Seevern, W. Hoffman, and C. A. Carpenter, p. 189.

Recommendation of Committee on Law Reform offering substitute for Code §3538 (for recommendation see p. 125).

Postponed to next meeting, p. 193.

LIST OF MEMBERS OF THE IOWA STATE BAR ASSOCIATION

Albert, E. G.	Jefferson	Briggs, W. P.	Sheldon
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Amos, C. H.	Knoxville	Brown, C. M.	Sigourney
Anders, A. J.	Oelwein	Brown, Franklin	Des Moines
Applegate, J. H.	Guthrie Center	Brown, Glenn	Dubuque
Armitage, Hiram P.	Afton	Brown, J. D.	Guthrie Center
Arnold, A. A.	Prairie City	Bruff, J. B.	Atlantic
Ayers, W. S.	Des Moines	Bryant, Wm. C.	Griswold
		Burgess, E. A.	Sioux City
Bailey, Marsh W.	Washington	Burk, W. D.	Muscatine
Baker, George W.	Leon	Burkheimer, C. D.	Des Moines
Ball, Geo. W.	Iowa City	Burnham, Geo. W.	Marshalltown
Balluff, Walter M.	Davenport	Burnquist, B. B.	Fort Dodge
Bannister, Robert J.	Des Moines	Burrell, W. C.	Oskaloosa
Barker, A. P.	Clinton	Bush, A. G.	Davenport
Barner, Geo. S.	Webster City	Bush, F. C.	Garner
Barnhart, W. E.	Spencer	Byers, H. W.	Des Moines
Bennett, A. T.	Sioux City	Byington, O. A.	Iowa City
Berry, W. H.	Indianola		
Berryhill, James G.	Des Moines	Caldwell, John R.	Toledo
Bevington, T. F.	Sioux City	Calhoun, J. C.	Keosauqua
Birdsall, W. N.	Waterloo	Canaday, Walter	Marshalltown
Block, Louis	Davenport	Cardell, W. W.	Perry
Boardman, C. H. E.	Marshalltown	Carney, J. L.	Marshalltown
Bock, W. J.	Spirit Lake	Carney, L. T.	Marshalltown
Boeye, A. N.	Webster City	Carpenter, C. A.	Columbus Jct.
Boland, T. J.	Council Bluffs	Carr, E. M.	Manchester
Bollinger, James W.	Davenport	Carr, George H.	Des Moines
Bowen, Crom.	Des Moines	Carr, J. W.	Montezuma
Boyd, J. O.	Keokuk	Carskadden, J.	Muscatine
Bradford, Theo. F.	Marshalltown	Carson, Guy R.	Des Moines
Bradshaw, C. B.	Toledo	Carter, John E.	Sioux City
Bradshaw, Chas. S.	Des Moines	Cavanaugh, B. J.	Des Moines
Bray, T. J.	Grinnell	Cederquist, C. J.	Madrid
Brennan, Hugh	Des Moines	Chamberlin, A. P.	Des Moines

Chamberlin, W. M.	Davenport	Dahlberg, C. L.	Des Moines
Chantland, Wm. T.	Fort Dodge	Dale, Horatio F.	Des Moines
Chapin, A.	McGregor	Davidson, F. C.	Emmetsburg
Chase, Charles W.	Clinton	Davis, Frank M.	Corning
Cheshire, Thomas A.	Des Moines	Davis, James C.	Des Moines
Church, Z. A.	Jefferson	Davis, Walter M.	Iowa City
Clark, Charles A.	Cedar Rapids	Dawley, F. F.	Cedar Rapids
Clark, Charles R.	Montezuma	Dawson, E. A.	Waverly
Clark, Chas. W.	Montezuma	Deacon, C. J.	Cedar Rapids
Clark, Howard J.	Des Moines	Deemer, H. E.	Red Oak
Clark, J. J.	Mason City	Deery, John	Dubuque
Clarkson, John T.	Albia	DeGraff, Lawrence	Des Moines
Clements, W. G.	Newton	Devitt, J. F.	Muscatine
Cliggitt, John	Mason City	Devitt, James A.	Oskaloosa
Clyde, J. F.	Osage	DeWolf, Sherman W.	Reinbeck
Cochran, F. J.	Iowa City	Dille, Chester B.	Des Moines
Coffin, N. E.	Des Moines	Ditzen, Henry E. C.	Davenport
Cole, C. C.	Des Moines	Dodge, F. L.	Davenport
Collins, Ed.	Northwood	Dorn, C. R.	Des Moines
Collins, W. B.	Keokuk	Dudley, C. A.	Des Moines
Cook, J. C.	Cedar Rapids	Duffield, B. E.	Guthrie Center
Cook, J. E.	Independence	Dunham, G. W.	Manchester
Cooney, James	Oelwein	Dunshoe, Frank S.	Des Moines
Cooper, Frank A.	Davenport	Dutcher, Charles M.	Iowa City
Cooper, W. L.	Burlington	Dyer, S. R.	Boone
Cooper, W. S.	Winterset		
Cope, Fred A.	Des Moines	Eaton, W. L.	Osage
Corlett, James E.	Elkader	Edmundson, D. G.	Des Moines
Corlett, L. E.	Oskaloosa	Edson, W. C.	Storm Lake
Cornwall, W. W.	Spencer	Edwards, A. J.	Waterloo
Cosson, George	Audubon	Edwards, M. F.	Parkersburg
Courtright, O. B.	Waterloo	Eicher, H. M.	Washington
Courts, Fred	Morning Sun	Egermayer, Joseph H.	Marshalltown
Cox, Clifford D.	Des Moines	Ellis, F. W.	Clinton
Coyle, D. F.	Humboldt	Ely, N. D.	Davenport
Craig, John E.	Keokuk	Evans, E. B.	Des Moines
Craig, Theodore A.	Keokuk	Evans, H. K.	Corydon
Crary, E. A.	Grundy Center	Evans, W. D.	Hampton
Crocker, E. H.	Cedar Rapids	Everett, Leonard	Council Bluffs
Crockett, F. W.	Des Moines		
Crosby, J. H.	Cedar Rapids	Farber, E. N.	Marshalltown
Crosby, James O.	Garnaville	Farnsworth, W. H.	Sioux City
Crossley, J. J.	Winterset	Farrel, Frank	Fort Dodge
Crum, W. E.	Bedford	Faville, F. F.	Storm Lake
Cummins, A. B.	Des Moines	Feely, Guy A.	Waterloo
Cutting, E. W.	Decorah	Ferguson, Earl R.	Shenandoah

Ficke, C. A.	Davenport	Harmon, M. W.	Independence
Field, A. G.	Des Moines	Harnagle, Geo.	Des Moines
Finch, Parley	Humboldt	Harpel, L. V.	Boone
Flickinger, A. T.	Council Bluffs	Harrington, T. P.	Algona
France, J. C.	Tipton	Hart, William H.	Sac City
Francis, L. E.	Spirit Lake	Hart, W. R.	Iowa City
Frantzen, J. P.	Dubuque	Harvison, W. G.	Des Moines
Freelove, A. L.	Sioux Rapids	Harwood, Herbert M.	Des Moines
French, Nathaniel	Davenport	Havner, H. M.	Marengo
Fribourg, A. L.	Sioux City	Hayes, Samuel	Iowa City
Frick, M. W.	Rockwell City	Hays, Chas. L.	Eldora
Frisk, Edwin J.	Des Moines	Hays, S. A.	Winterset
Fuller, Wm. E.	Washington, D. C.	Healy, M. F.	Fort Dodge
		Healy, Robert	Fort Dodge
		Helsell, F. H.	Sioux Rapids
Gaass, Geo. G.	Pella	Henderson, J. A.	Jefferson
Gamble, J. D.	Knoxville	Henderson, J. H.	Indianola
Gannon, M. V.	Davenport	Henderson, O. J.	Webster City
Geske, M. X.	McGregor	Henderson, T. G.	Sioux City
Gibson, D. T.	Waverly	Henry, Ward C.	Des Moines
Gilbert, Barry	Iowa City	Henry, Geo. F.	Des Moines
Gillespie, John L.	Des Moines	Herrick, Earnest C.	Cherokee
Gilmore, M. C.	Ottumwa	Herrick, M. W.	Monticello
Goldsmith, Chas. D.	Sac City	Hewitt, James P.	Des Moines
Good, James W.	Cedar Rapids	Hickenlooper, Thos.	Albia
Goodykoontz, W. W.	Boone	Higbee, D. W.	Creston
Green, W. R.	Audubon	Hise, George E.	Des Moines
Greene, C. W.	Greene	Hobson, A. N.	West Union
Gregory, W. C.	Maquoketa	Hoersch, Wm.	Davenport
Griffiths, Henry H.	Des Moines	Hoffman, W.	Muscatine
Grilk, Charles	Davenport	Hollingsworth, A.	Keokuk
Guernsey, N. T.	Des Moines	Holsman, Henry B.	Guthrie Center
Guiher, J. A.	Winterset	Horack, H. C.	Iowa City
Guthrie, Thomas J.	Des Moines	House, A. J.	Maquoketa
		Howard, B. G.	Jefferson
Haines, R. M.	Des Moines	Howe, James A.	Des Moines
Hall, J. C.	Davenport	Hubbard, E. H.	Sioux City
Hall, T. W.	Clinton	Huber, S. C.	Tama City
Halladay, A. B.	Des Moines	Hudson, E. P.	Des Moines
Hallam, J. W.	Sioux City	Hughes, C. B.	West Union
Hamann, Albert W.	Davenport	Hume, James C.	Des Moines
Hamilton, Edward W.	Des Moines	Hunn, C. E.	Des Moines
Hammill, John	Britt	Hutchinson, Chas.	Des Moines
Hanley, J. A.	Davenport	Hutchinson, M. E.	Lake City
Harder, W. M.	Des Moines		
Hardinger, C. E.	Osceola	Jackson, D. V.	Muscatine
Harlan, Edgar R.	Keosauqua		

Jackson, W. M.	Bedford	Letts, F. D.	Davenport
Jacques, Jos. R.	Ottumwa	Lewis, Chas. J.	Mt. Ayr
Jayne, Henry	Muscatine	Lewis, W. R.	Montezuma
Jepson, George	Sioux City	Linville, G. P.	Cedar Rapids
Johnson, Irving	Oskaloosa	Littig, Victor L.	Davenport
Johnson, J. A.	Sioux City	Locke, R. J.	Primghar
Johnson, Robt. E.	Marshalltown	Logan, E. C.	Correctionville
Johnson, S. C.	Knoxville	Longley, Alfred	Waterloo
Johnson, Will E.	Ida Grove	Longueville, Oliver	Dubuque
		Lovejoy, A. B.	Waterloo
Keating, W. H.	Oskaloosa	Lovejoy, Owen	Jefferson
Keeler, Burr C.	Mason City	Lyman, H. G.	Grinnell
Keeley, W. M.	Washington	Lyman, J. P.	Grinnell
Keithley, Fred F.	Des Moines	Lyon, Arthur C.	Grinnell
Kelleher, D. M.	Fort Dodge	Lyon, C. W.	Valley Junct.
Kelley, B. E.	Emmetsburg		
Kelly, M. H.	Waterloo	Mabry, J. C.	Centerville
Kemmerer, Charles T.	Davenport	Macy, N. W.	Harlan
Kendall, N. E.	Albia	Mahoney, T. J.	Boone
Kenline, H. C.	Dubuque	Malcolm, J. O.	Oskaloosa
Kennedy, J. L.	Sioux City	Markley, J. E. E.	Mason City
Kenworthy, W. S.	Oskaloosa	Marsh, G. E.	Osage
Kern, C. D.	Waterloo	Martin, LeClair	Cedar Falls
Killpack, W. H.	Council Bluffs	Martin, Wesley	Webster City
Kimball, Clem F.	Council Bluffs	Matthews, M. C.	Dubuque
Kindall, Azariah	Onawa	Mattice, M. J.	Webster City
Kingland, T. A.	Lake Mills	Mattox, L. H.	Shenandoah
Kinkead, W. C.	Knoxville	Maxwell, Chas. F.	Des Moines
Kirby, J. F.	Williamsburg	Maxwell, Thos. L.	Creston
Kirk, Clyde	Des Moines	McCall, John A.	Des Moines
Kirkpatrick, Fred	Spencer	McCarthy, Daniel	Ames
Knapp, Bradford	Clarion	McCarthy, Dwight G.	Emmetsburg
Korns, F. B.	Des Moines	McClain, Emlin	Iowa City
Kuehnle, Carl F.	Denison	McConlogue, J. H.	Mason City
		McCoy, Ben	Oskaloosa
Lacey, John F.	Oskaloosa	McCoy, E. H.	Waterloo
Ladd, Scott M.	Des Moines	McCoy, John N.	Oskaloosa
Ladd, W. A.	Estherville	McCoy, W. J.	Clinton
Lane, Dick R.	Davenport	McCulla, Walter P.	Cherokee
Lane, Joe R.	Davenport	McDonald, W. J.	Iowa City
Larson, J. B.	Nevada	McElroy, W. O.	Newton
Law, W. R.	Waterloo	McFerren, Rube	Webster City
Lawrence, G. W.	Marshalltown	McGinnis, V. B.	Leon
Lee, C. G.	Ames	McHenry, W. H.	Des Moines
Lee, J. W.	Webster City	McIntyre, George A.	Shell Rock
Leonard, J. C.	Cedar Rapids	McLaughlin, A. A.	Des Moines

McMahon, P. D.	Danison	O'Brien, R. J.	Independence
McMillan, H. G.	Cedar Rapids	O'Connor, F. A.	New Hampton
McNett, Walter	Ottumwa	Odle, M. S.	Des Moines
McNett, Wm.	Ottumwa	Olsen, A. P.	Leon
McPherson, Smith	Red Oak	Ontjes, F. A.	Mason City
Merner, W. H.	Cedar Falls	Orvis, C. C.	Oskaloosa
Mershon, J. E.	Des Moines	Otis, E. B.	Monona
Milchrist, William	Sioux City	Otto, Ralph	Iowa City
Miles, Lewis	Corydon	Owen, Geo.	Carroll
Miller, A. M.	Des Moines	Park, A. E.	Des Moines
Miller, C. J.	Rock Rapids	Parker, A. C.	Des Moines
Miller, Jesse A.	Des Moines	Parker, Addison M.	Des Moines
Miller, Oliver H.	Des Moines	Parker, J. M.	Marshalltown
Miller, W. E.	Des Moines	Parrish, J. L.	Des Moines
Milligan, William D.	Guthrie Center	Parrish, R. L.	DeWitt
Mitchell, W. E.	Sidney	Parsons, J. M.	Des Moines
Moffit, John T.	Tipton	Pascal, Aylett L.	Des Moines
Montzheimer, O. H.	Primghar	Patterson, G. E.	Estherville
Moore, W. F.	Guthrie Center	Patterson, J. G.	Oskaloosa
Moore, W. L.	Manilla	Pepper, I. S.	Muscatine
Morling, Edgar A.	Emmetsburg	Percival, Leo C.	Winterset
Morris, E. T.	Des Moines	Perkins, E. C.	Delhi
Morris, J. W.	Panora	Perry, E. D.	Des Moines
Morrison, Edmund D.	Washington	Phelps, George B.	Clinton
Morse, J. W.	Estherville	Phillips, O. C. G.	Oskaloosa
Mueller, Alfred C.	Davenport	Pickett, C. E.	Waterloo
Mullan, Alfred W.	Waterloo	Platt, F. C.	Waterloo
Mullan, C. W.	Waterloo	Popham, R. G.	Marengo
Mulvaney, William	Cherokee	Porter, John D.	Webster City
Munger, Robert H.	Sioux City	Powell, Charles L.	Des Moines
Murphy, D. D.	Elkader	Powers, F. M.	Carroll
Murphy, D. J.	Waukon	Pratt, C. A.	Traer
Murphy, E. A.	Vinton	Preston, A. L.	Avoca
Myers, O. P.	Newton	Preston, Byron W.	Oskaloosa
		Price, B. J.	Fort Dodge
Nash, Frank T.	Oskaloosa	Proudfoot, A. V.	Indianola
Newberry, B. W.	Strawberry Pt.	Prouty, S. F.	Des Moines
Newburn, John	Des Moines	Pugh, A. D.	Des Moines
Newman, J. B.	Cedar Falls		
Ney, John J.	Iowa City	Quarton, W. B.	Algona
Nichols, Edmund	Perry		
Norris, P. G.	Grinnell	Ramsey, W. H.	Garner
Norris, W. H.	Manchester	Ramseyer, C. W.	Bloomfield
Northup, F. E.	Marshalltown	Ransier, Charles E.	Independence
Nourse, Clinton L.	Des Moines	Satcliff, W. C.	Red Oak
		Rayburn, Will C.	Grinnell

Read, Ralph L.	Des Moines	Silwold, Henry	Newton
Read, W. L.	Des Moines	Simmons, E. F.	Fairfield
Reed, Carl W.	Cresco	Sims, Jacob	Denison
Reed, H. T.	Cresco	Skinner, George F.	Clinton
Reed, U. M.	Brooklyn	Smith, Clarence H.	Mason City
Reid, F. D.	Oskaloosa	Smith, Earl	Mason City
Remley, H. M.	Anamosa	Smith, J. J.	Montezuma
Remley, Milton	Iowa City	Smith, M. A.	Independence
Reynolds, S. V.	Oskaloosa	Smith, Paul W.	Ottumwa
Riniker, S. D.	Rock Rapids	Smith, R. J.	Waterloo
Roach, E. C.	Rock Rapids	Smith, Walter I.	Council Bluffs
Roberts, M. A.	Ottumwa	Snell, J. J.	Boone
Roberts, W. J.	Keokuk	Snoke, D. H.	Durant
Robinson, G. S.	Sioux City	Snyder, S. B.	Council Bluffs
Rockafellow, J. B.	Atlantic	Soper, Erastus B.	Emmetsburg
Roddewig, Louis E.	Davenport	Spaulding, H. L.	Elma
Roedell, R. P.	Dubuque	Springer, Arthur	Wapello
Rogers, J. A.	Clarion	Starr, J. P.	Fairfield
Royal, Lewis E.	Des Moines	Steele, J. P.	Winterset
Rudolph, C. J.	Waterloo	Stevens, J. E.	Boone
Rule, A. L.	Mason City	Stevens, J. L.	Boone
Rule, Duncan	Mason City	Stevens, T. S.	Hamburg
Ruymann, C. J.	Davenport	Stevenson, E. C.	Rockwell City
Ryan, J. B.	Colfax	Stevenson, Jesse F.	Des Moines
Ryan, W. L.	Des Moines	Stevenson, Thos. F.	Des Moines
		Stewart, A. G.	Waukon
Sabin, E. M.	Northwood	Stewart, A. K.	Des Moines
Sampson, E. D.	Des Moines	Stiger, H. J.	Toledo
Sargent, Fred W.	Sioux City	Stillman, W. S.	Council Bluffs
Saunders, C. G.	Council Bluffs	Stipp, Harley H.	Des Moines
Sawyer, Hazen I.	Keokuk	Stockman, D. T.	Sigourney
Sawyer, P. A.	Sioux City	Strauss, Oscar	Des Moines
Scales, J. H.	Ackley	Striker, W. O.	Aurelia
Scholz, Chas. E.	Guttenberg	Strock, W. C.	Des Moines
Scott, George C.	Sioux City	Struble, G. R.	Toledo
Scott, Ray P.	Marshalltown	Stuart, C. W.	Clarinda
Seever, George W.	Oskaloosa	Sullivan, Jerry B.	Des Moines
Sharon, E. M.	Davenport	Sullivan, John B.	Des Moines
Shaw, L. M.	Philadelphia, Pa.	Sullivan, J. W.	Algona
Shaw, Albert J.	Pocahontas	Sutton, L. F.	Clinton
Sheriff, H. H.	Oskaloosa	Swasey, Edward H.	Dow City
Shipley, John C.	Mason City	Sweeney, J. H.	Osage
Sherwin, J. C.	Mason City	Swetting, E. V.	Algona
Shortley, John	Perry	Swisher, B. F.	Waterloo
Shull, Delos C.	Sioux City		
Sibley, Stephen H.	Des Moines	Talbott, John F.	Brooklyn

Taylor, H. E.	Waukon	Weaver, H. O.	Wapello
Thomassen, Geo. J.	Pella	Weaver, S. M.	Iowa Falls
Thompson, Bert J.	Forest City	Webber, John F.	Ottumwa
Thompson, J. M.	Cedar Rapids	Weber, E. C.	Fort Madison
Thompson, Lester L.	Valley Junction	Weeks, E. W.	Guthrie Center
Thorne, Clarence M.	Dubuque	Wegerslev, C. H.	Alta
Thorne, Clifford	Washington	Wells, Arthur B.	Corning
Thurston, Lloyd	Osceola	Wenner, Edward J.	Waterloo
Tinley, Emmet	Council Bluffs	Wheeler, O. D.	Council Bluffs
Titus, G. M.	Muscataine	White, E. S.	Harlan
Towner, H. M.	Corning	White, M. M.	Ida Grove
Trewin, J. H.	Cedar Rapids	White, William Allen	Washington
Trimble, Palmer	Keokuk	Whitmore, Chester W.	Ottumwa
True, Geo. C.	Oskaloosa	Wichman, J. E.	Garner
Tucker, E. B.	Columbus Jet.	Wilcox, Charles S.	Des Moines
		Wilcox, Elmer A.	Iowa City
Underhill, C. E.	Onawa	Wilcocksen, K. E.	Sigourney
Upton, C. C.	Cresco	Wilcoxon, Wm. M.	Des Moines
Utterback, Hubert	Des Moines	Willet, J. W.	Tama City
		Williams, F. M.	Iowa Falls
Van Auken, S. G.	Des Moines	Wilson, C. J.	Washington
Vander Ploeg, W. G.	Knoxville	Wilson, H. J.	Burlington
Van Law, C. H.	Marshalltown	Winter, P. C.	Creston
Van Oosterhout, P. D.	Orange City	Wissler, E. A.	Carroll
Ver Ploeg, C.	Oskaloosa	Witham, O. W.	Greenfield
Vollmer, Henry	Davenport	Wolfe, P. B.	Clinton
		Wolfe, R. B.	DeWitt
Wade, M. J.	Iowa City	Wood, Charles B.	Corwith
Walker, Henry G.	Iowa City	Woodin, D. W.	Des Moines
Walker, W. M.	Keosauqua	Woodson, George H.	Oskaloosa
Wallace, Arthur T.	Des Moines	Work, W. A.	Ottumwa
Wallingford, J. D.	Des Moines	Wright, Craig L.	Sioux City
Walsh, E. C.	Clinton	Wright, Craig T.	Des Moines
Walsh, M. A.	Clinton	Wright, B. M.	Fort Dodge
Walters, C. E.	Toledo	Wright, Sam S.	Tipton
Ward, Geo. W.	Eldora	Wright, W. S.	Dubuque
Watson, J. O.	Indianola		
Weaver, J. B., Jr.	Des Moines	Ziegler, A. H. F.	Anita

INDEX

[Titles of addresses and papers are printed in *italics*.]

- Adams, John, 45, 46, 61; appointment of Marshall by, 61, 62, 63
- Agnew, Daniel, 35
- American Bar Association, report of Delegates to, 37-43; attitude of, toward reversal of decisions, 152, 154; Delegates to, 184
- Annual Addresses, 219
- Appellate courts, effect of proposed change on, 143, 144, 146
- Arizona, modification of fellow-servant rule in, 162
- Arkansas, abolition of fellow-servant rule in, 162
- Auditing Committee, members of, 58; report of, 86
- Aviation, resolution relative to, 39
- Baker, Andrew Jackson, biographical sketch of, 21, 22
- Baker, Charles, biographical sketch of, 22, 23
- Baldwin, Simeon E., resolution by, 39
- Ball, George W., 22
- Bank of the United States, decision relative to, 70
- Banquet, proceedings of, 88-123
- Bar, position of, in national life, 7
- Bar Association, Iowa State, next meeting of, 3; officers of, 3; executive committee of, 3
- Bar Association, State (first), 17; recommendation relative to proceedings of, 18
- Belsheim, Gullick H., biographical sketch of, 23
- Binney, Horace, 66
- Birchard, William J., biographical sketch of, 26
- Black Hawk, 6
- Blackwell, J. Y., 22
- Blanchard Act, 189, 192
- Boies, Horace, 148
- Bonds, decision of court relative to issuance of, 98, 99
- Bowen, Crom, 17
- Bradley, Justice, attitude of, toward judicial construction, 100
- Brewer, David J., 126, 147
- Brockett, O. M., letter from, 185, 186
- Brown, Alexander, biographical sketch of, 24, 25
- Brown, Thomas, biographical sketch of, 23, 24
- Brown, William D., biographical sketch of, 25, 26
- Bryce, James, tribute to Marshall by, 72
- Buchanan, James, 63
- Bunker Hill Monument, railroad used in construction of, 102
- Burke, John, Governor, response to toast by, 112-117; address by, 156-183
- By-laws, amendment to, 194; text of, 199
- Cade, Jack, 145
- Calhoun, John C., Webster's reply to, 49
- Carney, J. L., address by, 59-73; remarks by, 194, 195

- Carpenter, C. A., response to address of welcome by, 9-14
- Cedar Rapids, meeting of Association to be held at, 3
- Charleston & Hamburg Railroad, 102
- Chase, Warren, biographical sketch of, 26
- Chatham, Lord, 44
- Chattanooga, meeting of American Bar Association at, 37; description of battle-fields near, 40-43
- Chicago, number of murders in, 152
- Chickamunga, description of battle-field of, 41
- Choate, Joseph H., charges against, 38; reference to, 51
- Circuit judges, days of, 6
- Clark, C. A., 17
- Clark, J. J., discussion by, 136-139
- Clark, James W., biographical sketch of, 26
- Clarkson, John T., discussion by, 186, 187
- Clements, W. G., discussion by, 127, 134, 155
- Code pleading, teaching of, 82
- Collateral Inheritance Tax Law, resolution for repeal of the, 59, 124, 125
- Committee, special, question referred to, 18, 184, 189
- Committees, reports of, 14, 15, 18-37, 39, 123, 127; appointment of, 184; list of members of, 205-218; memorandum of subjects referred to, 223
- Common Law, importance of, 7, 8
- Common law pleading, teaching of, 82
- Compensation for injuries, inadequacy of, 159; adjustment of, 161, 162; provision for, 164, 165
- Constitution, chief functions of, 118; amendment of, 119
- Constitution of Arizona, provision for recall in, 99
- Constitution of Iowa State Bar Association, 197
- Constitution of United States, influence of lawyers in adoption of, 46, 47; Marshall's interpretation of, 64, 65, 67, 68, 69-73; importance of judicial interpretation of, 96, 97; separation of powers in, 99; protection of, 122
- Contributory negligence, modification of law of, 162, 163; reference to doctrine of, 168
- Convictions, percentage of, 152, 153
- Cooley, T. M., 17
- Corbeth, Thomas, 27
- Corporations, basis of federal jurisdiction over, 97
- Courts, constitutional duty of, 99; danger in reversal of decisions by, 109; need of confidence in, 112; loss of confidence in, 131; relations of jury and, 143; relief of, 145
- Crawford, Phineas White, biographical sketch of, 26, 27
- Criminal law, administration of, 142
- Crippen case, 126, 139
- Crosby, James O., suggestion by, 58, 59; motion by, 86, 155; discussion by, 127, 144
- Davis, Jacob C., biographical sketch of, 27
- Davis, J. C., response to toast by, 101-106
- Davis, M. B., 25
- Dawley, F. F., paper by, 53-58; discussion by, 146-150; amendment to by-laws by, 194
- Decisions, danger in reversal of, 109; recommendation of law relative to reversal of, 123, 125-155
- Deemer, Horace E., 86; report by, 123-127; discussion by, 151-155, 186, 187, 188-194
- Demolins, Edmond, 57

- Demurrer, recommendation relative to, 124, 189-193
- De Toqueville, quotation from book by, 120, 121
- Devitt, J. A., announcement by, 52; response to toast by, 89-95
- Dewey case, 147
- Dexter, Samuel, 66
- Dillon, John F., 17; estimate of Marshall by, 67, 68
- Dolliver, Jonathan Prentiss, biographical sketch of, 27-29
- Douglas, Stephen A., debates between Lincoln and, 51
- Ellsworth, Oliver, 61
- Elwood, Thomas Ethan, biographical sketch of, 29
- Emery, James A., address by, 165
- Employee, change in relation between employer and, 156, 157; small amount of compensation received by, 165; compulsory insurance for compensation of, 166; obligation between employer and, 171; analogy between seaman and, 173-175; increased danger to, 175; need for protection of, 175; contribution by, to compensation fund, 179
- Employer, change in relation between employe and, 156, 157; insurance of, against liability, 158, 165; fixing of responsibility upon, 164, 165, 166; defects in insurance of, 166; obligation between employe and, 171; reasons for fixing responsibility on, 178; contribution by, to compensation fund, 179; attempts to fix liability on, 179, 180
- Employers' Liability and Working-men's Compensation Acts*, 156-183
- Employers' liability law, adoption of, recommended, 123, 186, 187
- England, number of murders in, 152; percentage of convictions in, 152, 153; fellow-servant law in, 159; industrial insurance in, 180
- Error, recommendation relative to reversal of judgment on account of, 123, 125-155
- Europe, principle of workmen's compensation in, 164; industrial insurance in, 165, 180
- Executive Committee, members of, 3, 87; report of, 183
- Farrar, Edgar H., president of American Bar Association, 39
- Federal Courts, reorganization of, 40; wide jurisdiction of, 96, 97; plan for reformation in, 118; special function of, 122
- Federal Judicial Code, 152
- Federal Judiciary and the Bar, The*, 117-122
- Federal Practices Act, 40
- Fellow-servant doctrine, origin of, 97; reference to, 159-161, 168; modification of, 162, 163
- Ferguson, William Pitt, biographical sketch of, 29, 30
- Fitzgarrauld, William Franklin, biographical sketch of, 30
- France, number of murders in, 152; percentage of convictions in, 153
- Franklin, Benjamin, 45
- French Revolution, 139, 140
- Gatch, C. H., 17
- Gear, John H., 27
- Georgia, abolition of fellow-servant rule in, 162
- Germany, number of murders in, 152; percentage of convictions in, 153; industrial insurance in, 180-183
- Gleason, Horace W., biographical sketch of, 31
- Goths, movements of, 54
- Grant, James, 17
- Grievances, Committee on, members of, 184

- Haines, R. M., discussion by, 153, 154
- Hamilton, Alexander, 46, 50, 51; character of, 47, 48
- Hanging, defense of, 111
- Harl, Charles M., resolution to memory of, 123; reference to, 194
- Harlan, Justice John M., opinion of, in *Standard Oil* case, 100
- Hayne, Robert Y., Webster's reply to, 49, 50
- Henry County, 10
- Holland, industrial insurance in, 180
- Hornby, John D., biographical sketch of, 31
- Hubbard, N. M., 22
- Idaho, modification of fellow-servant rule in, 162
- Illinois, constitutionality of railroad commission laws of, 102, 103; reference to, 142, 165
- Income tax, change of court decisions relative to, 97, 98
- Insanity as defense to criminal charge, 124
- Insurance, compulsory, 165; effect of employer's liability, 165; defective system of, 166; benefit of compulsory, 166
- Intoxication as defense to criminal charge, 124
- Iowa, constitutionality of railroad commission laws of, 102, 103; laws relative to railroads in, 104; desirability of federal control of railroads in, 104, 105; labor legislation in, 162, 163
- Ivory, Theodore W., biographical sketch of, 31, 32
- Jay, John, career of, 44-46; reference to, 61
- Jay's Treaty, 45
- Jefferson, Thomas, 44, 45, 139, 154
- Johnson, James, 24
- Johnson case, 147
- Judge and the Law, The*, 95-100
- Judges, recall of, 7, 99, 100, 148; character of legislation formulated by, 97, 98
- Judgment, recommendation relative to setting aside or reversal of, 123, 125-155
- Judicial interpretation, importance of, 96, 97
- Judicial reform, efforts to secure, 118
- Judiciary Act, 40
- Jurisprudence, essentials of ideal system of, 117, 118
- Jury, reversal of judgment on account of misdirection of, 123, 125-155; usurping of functions of, 130, 131; relations of court and, 143; fixing of amount of damages by, 178
- Jury of our Peers, A*, 106-112
- Jury trial, importance of, 109, 110; need for elevation of standard of, 110, 111; advantages of, 145
- Kent, Chancellor, 70
- King, Rufus, 46
- Lacey, John F., address of welcome by, 5-9; discussion by, 134-136, 152, 153, 188, 190, 191
- Laurens, Henry, 45
- Law, true test of, 8; eternal nature of, 73-75; change in methods of teaching, 78, 79; preparation for study of, 79; power of judge over, 97; loss of confidence in, 131
- Law, The*, 73-77
- Law, The Judge and the*, 95-100
- Law, The Railroads and the*, 101-106
- Law, The Uncertainties of the*, 89-95
- Law Reform, Committee of, report of, 123-127; discussion of recommendations of, 127-155, 186-194;

- vote on recommendation of, 155,
187, 189, 193; members of, 184
- Law school, requirements for admission to, 79; change of attitude toward, 80; importance of note-taking in, 80, 81; object of, 81; difference between eastern and western, 85
- Lawyers, changes in position of, 6; list of deceased, 20; education of, 77-86; responsibilities of, 122
- Lawyer as a Patriot, The*, 43-52
- Legal Biography, Committee on, members of, 184
- Legal Education and Admission to the Bar, Committee on, report of, 18; members of, 184
- Legal Education, A Practical*, 77-86
- Legislation, changes in recent, 38
- Lehmann, Frederick W., 38, 39
- Lewis, W. R., report by, 18-37; paper by, 73-77; discussion by, 146
- Librarian, report of, 16-18
- Lichty, Lewis, biographical sketch of, 32
- Lincoln, Abraham, 40, 60, 63, 139, 154; estimate of services of, to nation, 50-52
- Local Committee, announcement by, 52, 53
- Lookout Mountain, description of battle-field of, 42, 43
- Louisa County, 10
- Love, J. M., 17
- Lynchings, reasons for, 111; prevalence of, 152
- McClain, Emlin, report by, 18; discussion by, 141-146
- McConlogue, J. H., discussion by, 139, 140, 154; motion by, 183
- McCrary, George W., 17
- McCulloch v. the State of Maryland, 70
- McFerran, Reverend Alexander, invocation by, 5
- McNeil, Harrison, biographical sketch of, 32, 33
- McNett, William, discussion by, 187, 189, 192
- Madison, James, 46, 69
- Magna Charta, importance of judicial interpretation of, 96
- Mahaska County, 10
- Mahaska County Bar, dean of, 9
- Marbury v. Madison, 69
- Marshall, John, 40, 48, 50, 51, 96, 97
- Marshall, John*, 59-73
- Mason, Jeremiah, 49
- Members, list of new, 14, 15; complete list of, 224
- Membership, Committee on, report of, 14, 15; members of, 184
- Michigan, abolition of fellow-servant rule in, 163
- Middlesworth, Abram, biographical sketch of, 33, 34
- Miller, Benjamin Huber, biographical sketch of, 33
- Miller, Samuel F., 40
- Minnesota, modification of fellow-servant rule in, 163; reference to, 165
- Minnesota rate cases, 105
- Mississippi, abolition of fellow-servant rule in, 163
- Missouri, 142, 148, 152; modification of the fellow-servant rule in, 163
- Montana, 179
- Moon Law cases, 98
- Morris, Robert, 46
- Munn v. Illinois, 102
- Nash, Frank T., report by, 14, 15
- New Jersey, 179
- New York, 142, 152, 165; employers' liability law in, 166-179
- Nominating Committee, members of, 87; report of, 140
- North Dakota, abolition of fellow-servant rule in, 162

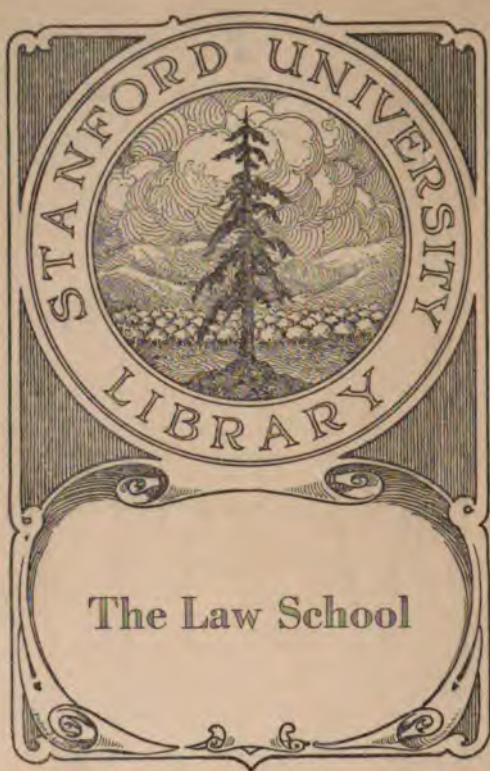
- North Dakota, The Bench and Bar of*, 112-117
- Notes, importance of taking, 80, 81
- Nourse, C. C., 17
- Officers, list of, 3; election of, 140, 141; list of, since organization of Association, 205-218
- Ohio, abolition of fellow-servant rule in, 163
- Oklahoma, recall of judges in, 148; abrogation of fellow-servant rule in, 163
- Oskaloosa, meeting of Association at, 5
- Otto, Ralph, paper by, 77-86
- Papers read before Association, list of, 220
- Parrish, J. L., discussion by, 127-131, 153, 191, 192, 193
- Parrish, E. L., discussion by, 192, 193
- Parsons, J. M., response to toast by, 95-100
- Particularist Society*, 53-58
- Patrick case, 93
- Patriot, The Lawyer as a*, 43-52
- Pierce, T., 33
- Pinckney, Charles C., 46
- Pleading, teaching of, 82; examination of, 83
- Plunkett case, 140
- Practice Court, description of, 81-85
- Procedure, importance of study of, 85
- Program Committee, members of, 184
- Railroads, importance of, in development of country, 101, 102; progress of construction of, 102; eras in history of, 102; case relative to government control of, 102, 103; conflicting legislation relative to, 103, 104; laws relative to, in Iowa, 104; desirability of Federal control of, 104, 105; abolition of fellow-servant rule with respect to, 162, 163; liability of, for accidents, 169, 175, 176, 177
- Railroads and the Law, The*, 101-106
- Randolph, Edmund, 46
- Recall of judges, 7, 99, 100, 148
- Recovery, inadequacy of laws governing right of, 158, 159
- Reversal of decisions, recommendation of law relative to, 123, 125-155; frequency of, 152
- Richardson, George A., biographical sketch of, 34
- Risk, doctrine of assumed, 161, 162, 168; abolition of doctrine of assumed, 162, 163; arguments against doctrine of assumed, 163, 164
- Roosevelt, Theodore, 126
- Rutledge, John, 61
- Rutledge, Robert, 24
- Sanborn, Judge, opinion of, 105
- Saunders, C. G., report by, 123; discussion by, 187; installation of, as President, 195
- Scott, Samuel Crew, biographical sketch of, 34
- Seamen, contract and services of, 172; liability of master for, 173, 174
- Seever, George L., discussion by, 191
- Seever, George W., discussion by, 150, 151, 188
- Separation of powers, 99
- Sherman Act, attitude of court toward, 76; influence of judicial interpretation of, 98
- Sherwin, John C., paper by, 43-52
- Shiras, O. P., 17
- Sixteen hour law, impracticability of, 104
- Sixth Judicial District, 10
- Small, A. J., report by, 16-18

- Smalley, Edward Lashelles, biographical sketch of, 35
- Smith, Walter L., response to toast by, 117-122; reference to, 188
- Stanberry, John S., biographical sketch of, 35
- Standard Oil Case, decision of court in, 98; opinion of Justice Harlan in, 100
- Stiles, E. H., 17
- Stowe, W. A., 17
- Supreme Court, approval of act for relief of, 123, 188-190; effect of proposed statute upon, 133, 144-146, 148, 149; question of act relative to, referred to committee, 189
- Taft, William H., 126, 147
- Technicalities, need for elimination of, 126; influence of, 153
- Texas, abolition of fellow-servant rule in, 163
- Thaw case, 126, 139
- Thayer, James B., 70
- Thompson, William George, biographical sketch of, 35, 36
- Tourville, Henri de, theories of, 53
- Treasurer, report of, 15, 16
- Trial, recommendation relative to granting of new, 123, 125-155
- Trustees of Dartmouth College v. Woodward, 70, 71
- Uncertainties of the Law, The*, 89-95
- Uniform State Laws, Committee on, report of, 39
- United States, percentage of convictions in, 153
- University of Iowa, Law College of, practice court at, 81
- Unknown person as defendant, 125
- Updegraff, Thomas, biographical sketch of, 36
- Vice-principal, doctrine of, 162
- Vinje, David Johnson, biographical sketch of, 36
- Wade, Martin J., response to toast by, 106-112; discussion by, 131-134, 189, 193; resolution by, 194; suggestion of, relative to membership, 195
- Washington (State), 152, 165, 179
- Washington, George, 44, 60, 62
- Watts, James R., charges against Choate by, 38
- Weaver, J. B., Jr., report by, 37-43, 86
- Webster, Daniel, 40, 44, 51, 66; services of, 48, 49
- Western Jurist, The, 17, 18
- Whipple, William Perry, biographical sketch of, 36, 37
- White, Andrew D., 126, 152
- Wigmore, Professor, 152
- Wilcox, Charles S., report by, 15, 16
- Wilson, James, 46
- Wilson, Woodrow, address by, 38
- Wirt, William, 66
- Wisconsin, constitutionality of railroad commission laws of, 102, 103; reference to, 165, 179
- Workingmen's compensation act, adoption of, recommended, 123; discussion of recommendation relative to, 186, 187
- Workingmen's Compensation Acts, Employers' Liability and*, 156-183
- Wright, George G., 24

**PROCEEDINGS OF THE
IOWA STATE BAR
ASSOCIATION**

*EIGHTEENTH
ANNUAL
SESSION*

**HELD AT CEDAR RAPIDS, IOWA
JUNE 27 AND 28, 1912**





C. G. SAUNDERS

PROCEEDINGS
OF THE
EIGHTEENTH ANNUAL SESSION
OF THE
IOWA STATE BAR ASSOCIATION

HELD AT
CEDAR RAPIDS, IOWA

JUNE 27 AND 28, 1912

EDITED BY H. C. HORACK, SECRETARY

IOWA CITY, IOWA
PUBLISHED BY THE ASSOCIATION

1912

[Announcement]

**THE NINETEENTH ANNUAL MEETING
OF THE
IOWA STATE BAR ASSOCIATION**

**WILL BE HELD AT
SIOUX CITY, IOWA
JUNE 26 AND 27, 1913**

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CONTENTS

	PAGE
ANNOUNCEMENT OF ANNUAL MEETING FOR 1913.....	2
ADDRESS OF WELCOME, JOHN M. GRIMM.....	6
RESPONSE TO ADDRESS OF WELCOME, JOHN HAMMILL.....	12
REPORT OF THE COMMITTEE ON MEMBERSHIP.....	15
REPORT OF THE TREASURER.....	22
REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY.....	25
REPORT OF THE LIBRARIAN.....	35
PAPER: THE IOWA STATE LIBRARY—WITH SPECIAL REFER- ENCE TO THE LAW DEPARTMENT, A. J. SMALL.....	38
PAPER: THE ADMINISTRATION OF THE PAROLE LAW: THE IN- DETERMINATE SENTENCE, WILLIAM BERRY.....	45
PRESIDENT'S ADDRESS: THE JUDICIAL RECALL, C. G. SAUNDERS	68
DISCUSSION OF THE COLLATERAL INHERITANCE TAX.....	93
ANNUAL BANQUET, C. G. SAUNDERS, TOASTMASTER.....	97
BACK NUMBERS, E. B. EVANS.....	98
RESPECT FOR AUTHORITY, ROBERT HEALY.....	101
THE SPIRIT OF THE COLLEGE OF LAW, JOHN G. BOWMAN	104
REMARKS BY GOVERNOR H. S. HADLEY.....	107
THE EARLY BENCH AND BAR OF IOWA, JOHN F. LACEY..	113
AMERICAN COURTS AS A CANADIAN SEES THEM, WILLIAM RENWICK RIDDELL.....	126
PAPER: SOME RAILROAD PROBLEMS.....	137
REPORT OF THE COMMITTEE ON LAW REFORM.....	144, 184

	PAGE
ANNUAL ADDRESS: THE CONSTITUTION OF THE UNITED STATES AND CANADA, WILLIAM RENWICK RIDDELL.....	156
REPORT OF THE AUDITING COMMITTEE.....	181
REPORT OF THE NOMINATING COMMITTEE.....	181
REPORT OF THE COMMITTEE ON RESOLUTIONS.....	182
REPORT OF THE EXECUTIVE COMMITTEE AND LIST OF COM- MITTEES FOR 1912-13.....	183
CONSTITUTION AND BY-LAWS.....	199
OFFICERS AND MEMBERS OF COMMITTEES, 1894 TO 1913.....	208
LIST OF ANNUAL ADDRESSES, 1895 TO 1912.....	223
LIST OF PAPERS READ, 1896 TO 1912.....	224
MEMORANDUM OF SUBJECTS REFERRED TO COMMITTEES FOR 1913 MEETING.....	227
OFFICERS AND EXECUTIVE COMMITTEE FOR 1912-1913.....	228
LIST OF MEMBERS.....	229
INDEX	237

PROCEEDINGS OF THE
EIGHTEENTH ANNUAL MEETING
OF
THE IOWA STATE BAR ASSOCIATION

HELD AT
CEDAR RAPIDS, IOWA, JUNE 27 AND 28, 1912

OPENING SESSION, THURSDAY, JUNE 27, 1912
9:30 O'CLOCK A. M.

THE PRESIDENT: The Association will be in order. The session will be opened by the Divine Invocation, which will be pronounced by the Reverend Doctor A. R. Burkhalter, of this city.

DIVINE INVOCATION

Almighty and Ever-blessed God, our Father, we approach Thy Throne, grace and mercy, this morning, knowing that it is also a Throne of Judgment. We are taught in Holy Scripture, that although clouds and darkness surround Thee, yet judgment and righteousness are the habitation of Thy Throne. We thank Thee that there is a Throne; we thank Thee that there is government, and that it is inflexible, unchangeable and eternal. We pray Thy blessing upon these, Thy servants, gathered in annual session, and beseech Thee, that Thy Divine Blessing may be upon them in all their deliberations, social fellowship, and functions, and that the result of their present gathering may be to increase their pleasure and profit and be of good unto all mankind. Our Father, we thank Thee that law has had her seat in Thy bosom; that her voice is the harmony of the world, and that all things in controversy are subject to her control, the least has needed her care and the greatest has ever been subject to her authority. And we pray Thee that Thy servants, in their several occupa-

tions, may do honor to the profession, the sacred profession which they should adorn. We think You realize what sacred interests are committed to their care, and may they by their example protect the people through the services of their high vocation. We pray, that the eternal pillars of government, law, order, and peace may be laid more deeply in the hearts and lives of the people, and these things we ask, in the words, and according to Him who did say and pray:

Our Father which art in Heaven, Hallowed be thy name. Thy kingdom come. Thy will be done in earth as it is in heaven. Give us this day our daily bread, and forgive us our debts, as we forgive our debtors. And lead us not into temptation, but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever. Amen.

THE PRESIDENT: The first thing in order is the address of welcome, which will be delivered by Honorable John M. Grimm, of the local bar.

ADDRESS OF WELCOME

Mr. President, and Members of the Iowa State Bar Association: On behalf of the Linn County Bar Association, and the good people of this community, I extend to you a most cordial and hearty welcome on this occasion.

We greet you in reverent memory and as a token of our sincere appreciation of the life and deeds of that able and eminent citizen, lawyer and jurist, who played an important part in founding this city, and who in 1847 became a member of the Supreme Court of this State, the Honorable George Greene. He not only gave to the State, as a publisher and reporter, the second to the fifth inclusive of the Iowa Reports, but furnished many foundation opinions during his incumbency in that office. As a citizen of this community, he gave liberally of his ample means to every commendable enterprise, including charities, church and school, as well as the municipality itself which to-day points with pride to George Greene Square, the little beauty spot you saw as you entered the city, one of his many gifts to this community.

This welcome is also extended to you in the name of a long line of loyal and illustrious members of the legal profession in this county, and in the name of an industrious and happy citizenship of thirty-five thousand people living here to-day. We are all proud of the opportunity to play the part of host to the representatives of an association of this kind, and appreciate the honor you bestow upon us by your presence. The local Committee on Arrangements have provided some entertainment for you, of which they will in due time advise you, but you are expected to make yourselves truly at home in Cedar Rapids, and ask for what you wish and do not see.

You are no doubt familiar with Article II of the Constitution of this Association, which reads:

This Association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal education, and to cherish a spirit of brotherhood among the members thereof.

Our people hope to be able to assist you in accomplishing, in some small degree at least, the last mentioned object in said article, for we pride ourselves on the spirit of brotherhood and fraternity which prevails here.

Having thus officially and formally assured you that you are on friendly soil, with proper protection from your enemies, strictly speaking, my mission is fulfilled, and perhaps I should yield the floor for further progress in the regular order of business. I find, however, by an examination of the official reports of this Association that a few mild suggestions with reference to the purposes and business of the Association, coupled with words of welcome have abundant precedent, enough in fact to satisfy the most ardent case lawyer.

It is said there are about three thousand regularly admitted lawyers in the State of Iowa, and yet there are only about five hundred members of this Association. The uncharitable might claim that the two thousand five hundred cannot meet the requirements of admission by obtaining the necessary recommendation from a County Bar Association or from three members of this Association in good standing. Unfortunately there

are a few men in the State of Iowa who claim to be lawyers, who perhaps could not gain admission under such regulations. Seriously speaking however it is a reproach upon the profession that only fifteen per cent maintains a membership in the Iowa State Bar Association.

It surely cannot be contended by anyone that such an association is not needed. The time has been when the profession, as such, commanded the unqualified respect of the business and social world, but in these latter days of hysterical unrest, suspicion, criticism, and vicious attack upon the existing order of things, it behooves the members of the profession to join their hearts and hands in an earnest endorsement of the purposes of this Association with the hope that they may materially assist in protecting the constitutions and statutes, which are the outgrowth of the wisdom and experience of the ages, from unwarranted and hasty assaults, and exert a wholesome, patriotic and beneficial influence in all matters pertaining to the welfare of the whole people.

A few days ago in a conversation relative to the judicial recall and recall of judicial decisions, a prominent manufacturer deliberately and vehemently stated he favored both recalls because the time had come when the people must protect themselves against "the damn lawyers of the country". Further discussion of the subject developed the fact that while the speaker had been eminently successful in his business and seemed fairly well informed on some subjects, his opinions in reference to the recall were based entirely upon ignorance and misconception. His authority for the faith within him, was an inflammable magazine article concerning the alleged misconduct of a single judge. He was in blissful ignorance of the underlying principles of our Government and of the wisely constituted checks and balances, which have so admirably saved the structure during all the stress and storm of the years. Like many another honest and well-intentioned man, what he needed most was light.

Every age has its mountain peaks of intelligence. Few men are endowed as were Marshall and Taney, yet years of earnest preparatory study, supplemented by more years of research and practical application have given the average members of the

profession a vast insight and grasp of all questions pertaining to government. Surely it must be admitted that no man or set of men are better prepared to make a proper study of such questions and give an explanation of them which may be understood by all, so well as the members of the legal profession.

To live comfortably and happily, enjoying the privileges of a stable government and the rewards of a prosperous business or profession should not be the sole aim of any patriotic citizen. Every man owes much to the community in which he lives, and in proportion to his knowledge and strength. Upon such a basis the three thousand lawyers of the State of Iowa should be closely united in a great organization formed and maintained for the purposes, among others, of creating a healthy public sentiment in reference to the various questions peculiar to the profession, and about which it is best advised, and to give proper shape to progress and resistance to mere unfounded impatience and discontent. One of its chief aims should be to purge the profession of the blackmailer and crook whose improper conduct is permitted, for lack of discrimination, to cast suspicion and reflection upon the vast army of industrious, earnest, honest, and patriotic members of the profession.

If perchance, in a rare occasion, the appointive power or the electorate should elevate an unfit man to judicial distinction, a thoroughly organized, active and fearless Bar Association should be the first to carefully and thoroughly investigate all charges publicly made and upon such investigation take such steps as the occasion required, to the end that only men of honest capability and integrity shall fill judicial positions and the great active profession, as well as that noble band of self-sacrificing men who grace the bench of this country, might be protected from the insinuations and slurs now being cast upon them by the impetuous and misinformed, because of the misconduct of a few isolated judges. The Bar Association should earnestly strive to maintain the highest possible standard of integrity for bench and bar, and then it should protect itself and its mighty membership from all unfounded and scurrilous attacks by whomsoever made.

We are making history rapidly in these days. It has been

said that "so easy is the transition from peace and order to uprising and revolution, so thoughtless are the most of us until the torch burns or the knife drops, that when governments fall or governments change, they seem almost to come and go by magic." The American people have never yet failed to meet every emergency. There is every foundation for the belief that when fully informed and properly aroused to a sense of duty, they will continue in the future as they have in the past to patriotically solve every issue that may arise, but a great responsibility rests to-day upon the legal profession of this country to see to it that the people are properly informed and patriotically advised upon all those important subjects which come peculiarly within the knowledge of the legal profession.

We have, as it were, a great unseen, intangible client, to whom we owe a great service, and whose interests committed to our charge are most vital—a client whose business is apt to be postponed and overlooked because his calls are infrequent and his demands are seldom heard, yet whose business when earnestly and properly attended to, brings an invisible retainer and fee, producing more satisfaction and happiness than the drafts and coin of ordinary business, much as they are to be desired. The satisfaction and consciousness of a solemn duty honestly performed, of exerting a mighty influence in molding the policies of our day and age, and shaping the destiny of the future, should be and is to every loyal, highminded lawyer, adequate and satisfactory compensation for all services rendered in the furtherance of the public welfare.

It may be said in answer that a large percentage of the legislating bodies of this land is composed of lawyers, and that therefore the influence of the profession is already abundantly exercised. Unfortunately the lawyer, as a trained, loyal, patriotic and highminded citizen, and the lawyer seeking, or seeking to retain, public office, are often like the famous Doctor Jekyll and Mr. Hyde. It can perhaps be safely said that one of the greatest menaces of the age arises from the stultification of honest individual opinion for the purpose of trimming sails to the ever changing breezes of public sentiment, whether informed or misinformed, patriotic or selfish, honest or corrupt. It should be the patriotic

mission of the lawyers to aid in molding public sentiment rather than flying political kites with weather-vane pennants attached, to discover perchance which way the wind blows.

When it is proposed to threaten the courts with extinction and their members with punishment when they follow their honest convictions as trained lawyers simply because they uphold an unpopular law enacted by the constituted authorities, surely the time has come when the patriotic members of the legal profession should at least be willing to agree, to "view with alarm". The cry of the demagogue that we fear to trust the people is not sufficient answer. The American people are to be trusted upon all occasions provided they can be given all the facts and will take the time and opportunity to properly and thoroughly inform themselves upon the question at issue. One of the great troubles with the average lawyer, is, he believes himself an embryonic statesman, sure to grow and expand into great glory when fully understood. He fears, because of that lurking ambition, to give honest expression to his opinions upon many questions concerning which he is best informed.

Necessarily the members of the bar of this State, as well as the members of the bar of any other State, will disagree about many questions of public importance involving special legal learning, but experience and observation gives abundant foundation for the belief that a thorough discussion by the bar of this or any other State of any such question would result in an expression of opinion well worthy the sober consideration of the people at large. Every thoughtful man believes in progress whether industrial or in politics, but as liberty does not mean license, so progress does not mean revolution.

Only through respect for the teachings of experience and through loyalty to due process of law can government of the people, by the people, for the people continue upon the earth.

The lawyers of this country owe the cause of liberty and popular government a great duty, and their influence can be best exerted by proper union and coöperation.

We owe it to ourselves and the great profession to which we belong and which we love, to protect it and its high ideals from

within and from without. We owe it to the Government under which we live and prosper, for our own sakes and for the sake of posterity, for the greatest good of the greatest number in the years to come, to apply ourselves patriotically and diligently to the proper solution of all great questions and particularly those concerning which of necessity we must be specially informed.

With the hope and belief that every action of this convention will be attuned to some such high ideal, I again bid you a hearty welcome to our midst.

THE PRESIDENT: The next number this morning is the response to the address of welcome, by Senator John Hammill, of Britt.

RESPONSE TO ADDRESS OF WELCOME

SENATOR HAMMILL: *Mr. President and Members of the State Bar Association:* I believe it was Josh Billings who said he could make an impromptu speech if he was given a week in which to make preparation for the speech. I might be able to do that myself if I had been given an opportunity to make preparation. I cannot complain but what I had sufficient time, but I am supposed to respond to the address of welcome by the man who just preceded me when I had no opportunity to see his speech, or what was wrapped up in his mind.

Nevertheless, we are glad of the opportunity of being at Cedar Rapids. In behalf of the Iowa State Bar Association, I desire to express to Mr. Grimm and the members of the bar of Cedar Rapids our gratefulness to them for these kind words of welcome. We are grateful not only to the bar, but to the citizens of Cedar Rapids for the welcome which they have given us. Only a short time ago I was present in your city at the State Convention, and the welcome which you accorded the delegates at that time, was an assurance that our welcome at this time would be pleasing and profitable. At that time your citizens were around with their automobiles taking the various delegates out to see your beautiful city, and I note the invitation you have extended to the members of the bar at this time which indicates that you will again take the members of the bar out over your beautiful city. One need only to travel over your city to be

impressed with your beautiful homes, splendid schools and magnificent churches and good business buildings, and one is soon convinced that you have one of the most progressive cities in the State, and I can assure you that we are glad to be with you on this occasion.

We have assembled here for various purposes; we have assembled to discuss matters of importance to the lawyers and judicial affairs of the State, and it is highly important that we be cautious and careful in our deliberations. This fact was never more forcibly brought home to me than in my experience in the Senate. No recommendation was given more weight by the Judicial Committee than the recommendations of the State Bar Association. This fact convinced me that the members of this Association should consider all questions and problems before them and weigh them carefully and reach conclusions which are just and right, in order that the confidence which the people of the State and the members of the Legislature have in our judgment should not be betrayed, and in no better way can this be done than by a frank and open discussion of these problems at this time. The more we discuss them, the better we will understand them, and in a better position we will be to advance the profession of the law and the judiciary.

True, at this time much criticism is being offered of judges and decisions. I think a great deal of it is unfounded. Perhaps here and there, there may be some criticism urged against some particular judge, but I believe, taking the judges as a whole, there are no higher class of men holding any position anywhere than the judges we have. Sometimes when the lawyer is not successful he feels that the decision of the judge which has been adverse to him is wrong and that he ought to have won his case. But, as he goes on and makes further study, and gets away from the prejudice that perhaps was created on account of the interest he had in his client, and takes the case to the Supreme Court, and there it is adverse to him, he usually finds the decision is right.

I do not believe in this agitation now being made against the judges. We find men, as was stated by the gentleman who extended you your welcome here, who make criticism of judges

and decisions. Some of it is coming from men of wealth; men whose property rights and personal liberties have been protected in the courts, and they are criticising the courts without any just foundation for their criticisms, and the principal reason for their criticism is, a lack of knowledge of judicial decisions and the administration of our law. These men criticise the courts because some particular decision has been against them. No doubt if a proper analysis could be made of that particular decision, it would be found to be right and that the individual, in his opinion, was wrong. We sometimes find lawyers, and occasionally a judge, criticising the courts and the administration of justice, and they are not doing it so much because they think the decision is bad, but because of their desire to cater to public clamor for some advancement along some line and not for the good of the judiciary or the public generally. I hope the time may never come when our judiciary will be in the hands of the ordinary office seeker. Suppose you would apply the rule of the recall to some of the judges who are called upon to enforce the liquor laws in some of our counties, what would happen to them? There is no question in my mind but that some of them would be recalled, yet every one of us would have to admit it was their duty to enforce the law.

I must not in this response to this welcome assume to advise you, for others more fitted than I have been assigned that duty. In conclusion, let me assure you, we appreciate your words of welcome and your hospitality and we will try to so conduct ourselves that when we leave your city your good opinion of us will be continued, and that we will stand as high at the close of the session in your admiration as we did in the beginning. I thank you.

THE PRESIDENT: I am pleased to see so many members of the Iowa Bar present at our opening session this morning. The session bids fair to be a very successful one, and the attendance, I am satisfied, will be quite large, as I know a considerable number who will arrive on the trains later in the day.

Before proceeding with the regular business of the Association, I think a few announcements should be made. The Honorable

William Renwick Riddell, Justice of the King's Bench Division, High Court of Justice for Ontario, will deliver the Annual Address to-morrow. It is my understanding that he will arrive here this afternoon about 3:20, and with your permission, I will appoint Chief Justice Emlin McClain, Honorable J. L. Carney, of Marshalltown, and Honorable Carl F. Kuehnle, of Denison, as a committee to meet the Justice and escort him to the hotel and later to this meeting.

The banquet will be given to-night, at the Montrose Hotel, at 7 o'clock. I wish to say, because the Local Committee cannot with becoming modesty say it, that that committee is going to give you about a three dollar banquet for \$1.50, and the local bar are bearing a very considerable part of the expense. We have a splendid program, both of addresses and music, and I am sure every one of you will be charmed and delighted, and that you will treasure this evening in your memory for years to come.

I will ask the Chairman of the Local Committee, to make such announcements as he cares to at this time.

MR. CHAS. R. SUTHERLAND: It has been planned to have a sufficient number of automobiles at the Montrose Hotel at 4 o'clock, and we hope to be able to accommodate every member of the Bar Association and take you a ride around the city, which will last for an hour, perhaps, and then we will go to the Country Club, where there will be an informal reception from 5:30 to 6:30, after which time it is planned to return to the Montrose Hotel for the banquet at 7 o'clock.

THE PRESIDENT: The first order of business is the report of the Committee on Membership, by Mr. Albert T. Cooper, of Cedar Rapids. Mr. Cooper has given a good deal of time and attention to this work and he is to be commended for the able manner in which he has discharged his duties.

REPORT OF THE COMMITTEE ON MEMBERSHIP

To the Iowa State Bar Association:

Your Committee on Membership beg leave to report that they have received written applications in due form from the follow-

ing lawyers, who are hereby recommended for membership in the Association :

H. J. Maurer,	Montezuma.
Joa. M. Dye,	Swea City.
H. W. Hull,	Madrid.
S. A. Jensen,	Forest City.
E. A. Johnson,	Lisbon.
R. E. Leach,	Independence.
Henry Rickel,	Cedar Rapids.
James S. Dewell,	Missouri Valley.
Matt J. Miles,	Cedar Rapids.
C. E. Wheeler,	Cedar Rapids.
Robert R. McBeth,	Keosauqua.
C. B. Robbins,	Cedar Rapids.
A. H. Sargent,	Cedar Rapids.
Jno. D. Stewart,	Cedar Rapids.
Jno. M. Redmond,	Cedar Rapids.
C. S. Smith,	Cedar Rapids.
John N. Hughes,	Cedar Rapids.
Francis A. Heald,	Cedar Rapids.
G. F. Buresh,	Cedar Rapids.
Wm. Chamberlain,	Cedar Rapids.
Wm. G. Clark,	Cedar Rapids.
Vincol Drahos,	Cedar Rapids.
A. T. Cooper,	Cedar Rapids.
L. D. Dennis,	Cedar Rapids.
E. W. Griffith,	Cedar Rapids.
J. W. Jamison,	Cedar Rapids.
Jas. J. Lenihan,	Cedar Rapids.
I. N. Flickinger,	Council Bluffs.
Hugh H. Shepard,	Mason City.
L. A. Hill,	Mason City.
Moulton Harkness,	Greene.
Wilmer W. White,	Iowa Falls.
Geo. T. Lyon,	Dubuque.
George C. Hoover,	West Branch.
Floyd Douglas,	Fort Dodge.
B. O. Clark,	Seranton.
Chas. C. Browning,	Coon Rapids.
W. N. Treichler,	Tipton.
L. H. Mattox,	Shenandoah.
Frank T. Davis,	Mt. Vernon.
P. W. Tourtellot,	Cedar Rapids.
C. L. Taylor,	Cedar Rapids.

H. E. Spangler,	Cedar Rapids.
H. C. Ring,	Cedar Rapids.
M. D. Porter,	Cedar Rapids.
Wm. Smyth,	Cedar Rapids.
Chas. R. Sutherland,	Cedar Rapids.
Mac J. Randall,	Cedar Rapids.
Fred W. Hann,	Cedar Rapids.
S. M. Hall,	Cedar Rapids.
Don Barnes,	Cedar Rapids.
C. W. Bingham,	Cedar Rapids.
Wm. L. Cron,	Cedar Rapids.
C. F. Clark,	Cedar Rapids.
C. B. Jones,	Cedar Rapids.
M. J. Donnelly,	Cedar Rapids.
E. A. Fordyce,	Cedar Rapids.
J. M. Grimm,	Cedar Rapids.
E. C. Johnson,	Cedar Rapids.
L. J. Horan,	Muscatine.
W. A. Westfall,	Mason City.
Daniel H. Fitzpatrick,	Mason City.
H. J. Bryant,	Mason City.
E. R. Baskerville,	Eldora.
E. B. Stiles,	Manchester.
W. G. W. Geiger,	Tipton.
Henry Peterson,	Council Bluffs
I. J. McDuffie,	Le Mars.
Frank R. Gaynor,	Le Mars.
Russell A. Marks,	Sioux City.
H. W. Pitkin,	Sioux City.
Edwin J. Stason,	Sioux City.
Chauncey L. Joy,	Sioux City.
John F. Joseph,	Sioux City.
F. H. Schmidt,	Sioux City.
R. H. Brown,	Sioux City.
H. W. Brockney,	Sioux City.
Geo. G. Yeoman,	Sioux City.
W. L. Harding,	Sioux City.
Carl R. Jones,	Sioux City.
Jacob F. Kass,	Sioux City.
D. H. Sullivan,	Sioux City.
J. W. Kindig,	Sioux City.
E. B. O'Brien,	Oelwein.
F. O. Ellison,	Anamosa.
William P. Bair,	Des Moines.
W. L. Barker,	Cresco.

B. F. Cummings,	Marshalltown.
T. G. Fee,	Centerville.
J. M. Wilson,	Centerville.
D. D. Borick,	Oxford Junction.
M. P. Smith,	Cedar Rapids.
G. B. Jennings,	Shenandoah.
T. S. Stevens,	Shenandoah.
D. F. Stock,	Ottumwa.
Wm. Dennis,	Marion.
C. J. Cash,	Anamosa.
G. A. Kenderdine,	Iowa City.
Eardley Bell, Jr.,	Wellman.
Wirt P. Hoxie,	Waterloo.
Roy A. Cook,	Independence.
S. W. Brookhart,	Washington.
Carl H. Mather,	Tipton.
W. H. Hurley,	Wapello.
Herbert S. Martin,	Le Mars.
W. G. Sears,	Sioux City.
O. D. Nickle,	Sioux City.
Robert B. Pike,	Sioux City.
F. L. Ferris,	Sioux City.
W. V. Stenteville,	Sioux City.
Ralph A. Oliver,	Sioux City.
O. T. Naglstad,	Sioux City.
Homer B. Carter,	Sioux City.
Geo. W. Finch,	Sioux City.
D. G. Mullan,	Sioux City.
Thos. P. Cleary,	Sioux City.
C. N. Jepson,	Sioux City.
Edmund Pendleton,	Sioux City.
D. C. Browning,	Sioux City.
A. G. Hess,	Sioux City.
J. S. McKemey,	Fairfield.
Harry Wifnat,	Perry.
Charles Pergler,	Cresco.
F. L. Meeker,	Marshalltown.
G. A. Mote,	Marshalltown.
B. W. Smith,	Centerville.
Claude R. Porter,	Centerville.
C. O. Boling,	Tipton.
M. H. Kepler,	Northwood.
F. L. Anderson,	Marion.
H. C. Chappell,	Independence.
T. A. Lane,	Victor.

D. E. Voris,
J. F. Conn,
Frank Talbott,
E. J. Harmeier,
Wm. Theophilus,
S. W. Livingston,
A. W. Fisher,
Hugh Mossman,
B. E. Rheinhart,
J. W. McGrath,
J. H. Allen,

Marion.
Hartley.
Brooklyn.
Washington.
Davenport.
Washington.
Walker.
Vinton.
Anamosa.
Eagle Grove.
Pocahontas.

Last year there were forty-two applications presented to the State Bar Association, and this year your committee has the pleasure of stating that the number has reached one hundred and forty-three, which substantial increase is doubtless due to the manner and method of the canvass for names and not to the extra exertion of the committee.

When your committee was appointed it made a careful survey of the situation and when it discovered that there were over three thousand members of the bar in the State, of whom only five hundred and eighty-six were members of the State Bar Association, it looked to the committee as if that ought not to prevail and that as long as it did it would argue that there was either something wrong with the Membership Committee, or with the two thousand five hundred lawyers not in the Association, or with the Association. Your committee therefore undertook to devise a plan which would exonerate the Membership Committee of all blame for this unfortunate condition and adopted the plan of having each county personally canvassed by an active home committee. It therefore divided the State into eleven districts (commensurate with the Congressional Districts of the State), appointed a member of the Membership Committee in each district, supplied him with blank applications and information with regard to the Association, and asked him to appoint a committee of three in each of his counties to personally solicit every lawyer in his county not then a member. Prior to making these appointments your committee had the Secretary of the State Bar Association mail to every lawyer in the State a pamphlet setting forth the objects of the Association, what it had accomplished,

what it could and would do in the future, and asking them to give careful consideration to the committee who would call upon them in a short time for their application.

Your committee had but little trouble in finding lawyers in each Congressional District who were willing to take up the work of directing the campaign in their respective districts; but some of them were extremely unfortunate in securing men to make the personal canvass of the counties and some of them seemed to misunderstand the instructions and undertook to do the work themselves by mail, which was a serious blunder as we view it. "Never do anything you can get others to do for you" was the slogan of your committee and it often works better than you might think. The personal solicitation is in our judgment much more successful than solicitation by mail, and where lawyers undertook to do the soliciting by mail the result was comparative failure in every instance. The absolute incapacity for some of these men to do this kind of work was well illustrated by the following letters written to one of the district agents:

One man wrote: "I have been unable to stir up any enthusiasm or interest in the matter among attorneys here and feel that you will have to give our bar and the county up as a bad crowd."

Another wrote: "We do not know of any members of the bar of this county who are not now members of the State Bar Association that would care to become members. If we should learn of any who would like to become members, we will at once write you."

Your committee believes the Iowa State Bar Association ought to have a membership of two thousand or two thousand five hundred and that the present plan of personally canvassing every county in the State is much more likely to bring good results than the plan heretofore used. But this year the committee was not appointed in time to take up the work with opportunity to change from bad to good canvassers and thus secure first class service. Where a thorough canvass has been made the results are excellent. For example, in Woodbury County with its one hundred and fifteen lawyers, thirteen or eleven per cent of whom were members of the Association, thirty-one applications were obtained, raising the membership in that county to forty-four, a gain of two hundred and thirty-nine per cent. In that

case the work was taken up at once and pushed to a speedy conclusion and the results reflected the spirit of the campaign. Could your committee have had more time to enable it to weed out poor solicitors and secure the services of such men as canvassed the county of Woodbury, the membership would have been at least trebled by their efforts.

But enough about the work of the Membership Committee and something as to what the Association itself might do to attract the attention of a majority of the lawyers of the State. Criticism came without limit. Many said they did not know what the Bar Association had accomplished, others that what little the Association had done in the way of recommending legislation they did not like, others that the Association was made up of men who had held office or wanted to, etc. Now of course all these objections are extreme, and yet it seemed to your committee that the Association might do something to interest every lawyer in the State without losing any of its dignity or detracting from the results of its efforts. Might not the State Bar Association, in matters of law reform, treat with every lawyer in the State instead of the members of the Bar Association only? Why should there not be a postal referendum of the lawyers of the State in the questions of law reform? Would it not be advisable as a means of getting the attention of the lawyers of the State and for their influence with the Legislature in securing the enactment into law of the reforms recommended by the Association? And would it not be fair and reasonable to permit lawyers, who for one reason or another are not members of the Bar Association to participate in these matters? And may not other means be used to enlist the interest of the non-members of the Association, so that more might conclude that there is something being accomplished by the Association and want to take a more active part in it?

Your committee therefore leaves with you the suggestion that the Bar Association feature some new plans to interest, if possible, every lawyer in the State in its work and help your Membership Committee do its work, hoping that in the course of a very few years the figures may be reversed, and instead of having five hundred eighty-six members of the State Bar Association out

of a bar of over three thousand, we may have twenty-five hundred members and leave only five hundred eighty-six lawyers on the outside. Under such circumstances the annual dues might be reduced to two dollars and the work of the committee in gathering statistics and learning about the methods employed in other States and other countries might be increased, greatly to the profit and benefit of the lawyers and the people of the State.

If your committee has gone away beyond its purview and stepped on the toes of any other committee, we hereby beg pardon and assure you that it was not our intention to trespass on the territory of any other.

Respectfully submitted,

A. H. HOLLINGSWORTH, Keokuk,
 W. J. McDONALD, Iowa City,
 E. H. MCCOY, Waterloo,
 A. L. RULE, Mason City,
 J. A. DEVITT, Oskaloosa,
 FRANK S. DUNSHEE, Des Moines,
 G. B. JENNINGS, Shenandoah,
 THOS. G. MCCARTY, Emmetsburg,
 FREDERICK H. SCHMIDT, Sioux City,
 A. T. COOPER, Cedar Rapids, *Chairman*.

Upon motion duly made the report of the Committee on Membership was received and placed on file.

THE PRESIDENT: On behalf of the Association as well as myself, I desire to thank the chairman of the Committee on Membership for the manner in which he has discharged the arduous duties of his particular work.

The next in order upon our program is the Report of the Treasurer, Mr. Frank T. Nash, of Oskaloosa.

TREASURER'S REPORT, FROM AUGUST 5, 1911, TO JUNE 27, 1912

RECEIPTS

Received of former Treasurer	\$1137.00
Membership fees	6.00
Annual dues	831.00
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Total Receipts	\$1974.00

DISBURSEMENTS

Chas. M. Dutcher, on salary (Order No. 2, Former President)	\$ 107.75
Citizen Printing House, for printing, 1910-11 (Order No. 1)	16.35
J. P. Blaise, stenographer, reporting proceedings of 1911 meeting and making transcript thereof (Order No. 2)	71.52
Beechler Insurance Agency, premium surety bond for Treasurer (Order No. 3)	5.00
Economy Advertising Company, for printing and binding proceedings of 1911 (Order No. 4)	472.33
H. C. Horack, Secretary, for postage, stenographic work and supplies (Order No. 5)	26.10
C. G. Saunders, for expenses, postage, etc. (Order No. 6)	20.91
Citizen Printing Company, to printing (Order No. 7)....	26.25
Economy Advertising Company, printing proceedings of early Iowa Bar Association (Order No. 8).....	398.20
Economy Advertising Company, printing and supplies (Order No. 9)	58.60
H. C. Horack, Secretary, postage on Early Proceedings, expenses and supplies (Order No. 10)	103.05
U. S. Express Company, for express charges for sending out proceedings (Order No. 11)	61.98
Frank T. Nash, Treasurer, postage, supplies, etc. (Order No. 12)	20.05
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Total disbursements	\$1388.09
Balance on hand	585.91
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Total	\$1974.00

Respectfully submitted,

FRANK T. NASH, *Treasurer.*

Upon motion duly made the report of the Treasurer was received and placed on file.

THE PRESIDENT: I desire to say in reference to the Treasurer's report, that we have had this year two special items of expense, one an enlarged item, and the other a new item entirely. It was deemed advisable by the Secretary and your President to have the reports that were sent to the members, bound in a little better form. We believed the Association had reached the place where

it could afford to have the copies bound in cloth, and it was accordingly done. We thought that would meet with the full approval of the Association. It renders the book more convenient and enables one to put it on the library shelf without the additional expense of binding. We hope the membership is pleased with the result.

At the last meeting of this Association a committee was appointed for the purpose of reprinting the proceedings of the old Association which existed for a number of years and then ceased to meet for some time. Many of these papers were of great value. They were given by men who had distinguished themselves in the State and Nation by reason of their service at the bar and on the bench, and as only a few copies of the reports of these meetings were in existence, it was thought, in order that the legal history of the State might be preserved, that a reprint should be made and put in the hands of the membership. That expense has aggregated roughly about \$450. The committee was given power to act for the term of its appointment, and the volume has been issued and placed in the hands of the members. There is one question in connection with that which ought to be considered by this Association. The plates have not yet been destroyed, and I presume some additional volumes could be secured, if necessary. The supply remaining, I think, is not large, and it is a question whether there ought not to be some more volumes printed, so that they may be had by the members of the bar in years to come, and also by the public libraries, and colleges over the country. I have become convinced in the last few years, that one of the great mistakes in the Nation was that proceedings of this character were not preserved. In the last three or four years I have interested myself in seeing that publications of this character might be placed in the libraries of the country. After this volume was prepared, I instructed the Secretary to send a copy to every State law library in the United States. I think copies should be placed in many of our public libraries. So far as we have any reason to expect, these libraries will exist for centuries, and these reports should be preserved there as a part of our history. The matter of additional copies is in the hands of the Association. I do not know what the ex-

pense would be. I am satisfied it will be less than the original one thousand volumes.

The next in order, will be the report of the Committee on Legal Education and Admission to the Bar, by Justice Scott M. Ladd of Des Moines.

JUSTICE LADD: The committee has not met yet, but we have informally talked the matter over and have concluded that no recommendation should be made at this time. There is no demand for any change in the law, and those who are educating the young men for admission to the bar are performing their duties satisfactorily. So that we make no recommendation.

THE PRESIDENT: The next in order is the report of the Committee on Legal Biography, by Mr. C. J. Wilson, of Washington.

REPORT OF COMMITTEE ON LEGAL BIOGRAPHY

Your Committee on Legal Biography presents herewith the biographies of the brothers who died between June 1, 1911, and May 10, 1912, and are pleased to state that the number of deaths for the year ending May 10th, is few as compared with other years.

The committee wishes to express its thanks to the Clerks of the District Courts of the several counties for the courteous and prompt replies to its correspondence; they have almost without exception replied promptly to inquiries by filling out the blanks sent them or by notifying the committee that there were no deaths to report.

The report submitted is far from satisfactory, from the fact that in a majority of instances the deceased were personally unknown to the committee, and the data in our possession was too meagre to give as complete a sketch as the subject undoubtedly is entitled to. We suggest that hereafter, as occasion may arise, members of the local bar supply the committee with a sketch of their deceased brothers, at least a statement of the standing of the deceased at the bar, as well as any unusual attainments or marked successes of his life. This seems necessary for the reason that their intimate knowledge of the subject preëminently quali-

fies them to give a fair and correct estimate of the life and character of such deceased brother.

We wish to acknowledge our thanks to James C. Davis, Esq., of the Polk County Bar, for the very excellent sketch of Mr. Carroll Wright.

C. J. WILSON,
W. R. LEWIS,
Committee.

LIST OF DECEASED IOWA LAWYERS, FROM JUNE 1, 1911 TO
MAY 10, 1912

<i>Name</i>	<i>Born</i>	<i>State</i>	<i>Died</i>	<i>State</i>
Brown, Timothy	Dec. 27, 1827	New York	April 17, 1911	Colo.
Brunner, William	Mar. 21, 1831	Scotland	Aug. 29, 1911	Iowa
Cooney, James	———— 1852	Ireland	Mar. 20, 1911	Iowa
Chrisman, Herring	Sept. 16, 1823	Virginia	Aug. 14, 1911	Iowa
Clements, David Watherup	July 9, 1846	Ireland	Nov. 16, 1910	Iowa
Cotten, W. A.	Feb. 2, 1843	Ohio	Mar. 12, 1912	Iowa
Eaton, Willard L.	Oct. 13, 1848	Iowa	June 7, 1911	Iowa
Fancher, George F.	———— 1865	————	June 19, 1911	Iowa
Freeland, J. W.	———— 1840	Indiana	April 27, 1912	Iowa
Henderson, John F.	June 29, 1826	Penn.	May 3, 1911	Iowa
Johnson, Wetter H.	July 24, 1837	New York	June 6, 1911	Iowa
Moore, William	Sept. 29, 1826	Ohio	Jan. 29, 1912	Iowa
Palmer, Dennison D.	———— 1843	New York	Jan. 9, 1911	Iowa
Wright, Carroll	Oct. 21, 1854	Iowa	Oct. 28, 1911	Colo.

TIMOTHY BROWN, of Marshall County. 1827-1911.

Timothy Brown was born December 27th, 1827, at Otsego County, New York, and died at Denver, Colorado, April 18, 1911. He received an academic education in Adela Academy, and studied law in the office of his uncle at Melford, New York, and was admitted to the bar in 1850 or 1851. He immediately commenced the practice of his profession at Toledo, Tama County, Iowa, afterwards locating in Marshalltown, Iowa, where he enjoyed a lucrative general practice. About 1875 he was attorney for the Iowa Central Railroad, and for many years Mr. Brown had a large clientage, and through his whole professional career was esteemed as a strong, forceful lawyer, and to the end enjoyed the confidence and esteem of his associates.

WILLIAM BRUMNER, of Marshall County. 1831-1911.

Mr. Brummer was born in Scotland, March 21, 1831, and died at Iowa City, Iowa, August 29, 1911. He received his education at Hampton Falls Academy, Hampton Falls, New York, studied his profession in an office, and was admitted to the bar at Marshalltown, Iowa, in 1857, where he practiced his profession during the active period of his life. He enjoyed the confidence and esteem of the community in which he lived, represented his county in the State Legislature of Iowa, and served as County Surveyor and City Engineer. Mr. Brummer died at the ripe age of eighty years.

JAMES COONEY, of Fayette County. 1852-1911.

James Cooney was born in Ireland, sometime during the year of 1852, and died at Oelwein on March 20, 1911. Mr. Cooney practiced his profession at Arlington, West Union, and Oelwein. He did not specialize in his practice and was at one time County Attorney.

We have given all the facts within our knowledge touching the life and character of this man. The date and place of birth, the place of his education, the date and place of his admission to the bar, facts touching his education, and his achievements are unknown to us. The inadequacy and probable injustice of this sketch is of no moment to the subject of it, but is a matter of profound regret to the committee.

HERRING CHRISMAN, of Monona County. 1823-1911.

Herring Chrisman was born September 16, 1823, in Rockingham County, Virginia; received his education at Washington College, Virginia, studied law, and was admitted to the bar at Broadway, Virginia, in June, 1844. He moved west and for a time engaged in the practice of law at Bloomington, Illinois, and later at Mapleton, Monona County, Iowa, until within a few years of his death, which occurred August 14, 1911.

Realizing that only those who knew him well are competent to give an estimate of the life and character of this man, we quote from the resolutions adopted by the Monona Bar the following tribute:

Herring Chrisman of Mapleton, Iowa, who at the time of his death, was by far the oldest attorney in the county and one of the oldest members of the legal profession in the State. Born in Rockingham County, Virginia, September 16th, 1823, Herring Chrisman outlived the biblical allotment of three score years and ten by more than seventeen years and died August 14, 1911 at Mapleton, his home, having reached the age of almost eighty-eight years.

After attending a preparatory school he entered Washington College, Virginia, but before graduating began the study of law and was admitted to the practice of his profession at the early age of twenty years. At the age of twenty-one, when he had been admitted to the bar only one year, he was elected County Attorney of the county in which he was born. In 1851 he moved to Illinois and practiced law in Chicago and Galesburg. In 1882 he came to Monona County, where he continued in active practice until within a few years of his death. For four years he served the people of this county as prosecuting attorney, which office he filled with impartiality, ability, and fidelity. For several years he was honored by the Bar of Monona County as president of the Monona County Bar Association.

Herring Chrisman was an able lawyer, a polished and courteous gentleman, a man of broad culture, a student of public affairs, and a true "gentleman of the old school". In his profession he was upright and honorable. In private life he was the ideal citizen. As a husband and father he made the home perfect. He kept his heart young to the last, and he was always cheerful and kind, and said no word that left a sting. To his adversary he was just; to a friend he was always loyal. He lived the good and simple life, and the world is better that he has lived in it and our profession purer that he was a member of it.

DAVID WATHERUP CLEMENTS, of Fayette County. 1846-1910.

David Watherup Clements was born in County Antrim, Ireland, July 9, 1846, and died at West Union, Iowa, November 16, 1910. His general education was obtained in the common schools and his law education at the State University of Iowa in the class of 1874. Upon his graduation from the Law School he immediately engaged in the practice of his chosen profession at West Union, Iowa. As evidence of the confidence in which he was held by his neighbors and friends he was elected County Attorney of Fayette County for three terms, and discharged the duties of the office with fidelity. He was an able lawyer, an earnest friend, and a good citizen.

W. A. COTTEN, of Clinton County. 1843-1912.

W. A. Cotten was born at Austintown, Ohio, February 2, 1843, and died at his home in DeWitt, Iowa, March 19, 1912. He received his academic education at the Northwestern College of Indianapolis, Indiana, and his professional education at Ann Arbor, and commenced the practice of law at DeWitt, Iowa, in September, 1867, where he spent his entire professional life. He was Mayor of DeWitt, County Attorney, and represented Clinton County as State Senator in the Nineteenth and Twentieth General Assemblies. In the several relations of life, Mr. Cotten acted from the highest motives, and fidelity to duty marked his conduct through life.

WILLARD LEE EATON, of Mitchell County. 1848-1911.

Willard Lee Eaton was born at Delhi, Delaware County, Iowa, October 13, 1848 and died at Osage, Iowa, June 7th, 1911.

He had his college preparation and did his work as a law student in the State University of Iowa, and was admitted to the bar at Des Moines, Iowa, in 1872, and commenced practice at Osage in the same year.

He was Clerk of the District Court, County Attorney, a member of the Board of Trustees of Upper Iowa University, a member of the Twenty-eighth General Assembly, Speaker of the House of the Twenty-ninth General Assembly, State Railroad Commissioner, Director of the Home Trust and Savings Bank, and Farmers National Bank of Osage, Iowa.

The subject of this sketch was more than prominent in Iowa affairs; a native Iowan and an enterprising, active, strong man, he had much to do with the shaping of public affairs, and in his death the State lost a citizen of the highest type.

The Mitchell County Press of date June 7, 1911, published a notice of Mr. Eaton's death and an estimate of his character, which is so thoughtful and complete that we embody it in part, as a part of this sketch:

The death of Hon. Willard L. Eaton, which occurred at his residence in Osage this morning at two o'clock, means to Osage the loss of her most prominent and useful and highly esteemed citizen. Great as is the public loss in the passing away of such a man, there is comfort in the reflection

that death cannot rob us of the example and inspiration of his life. He was grand in life, he was grand in death, and Osage will ever be the better for having had in its citizenship for fifty-five years, such a man who loved the city, smiled at her joys, pitied her weaknesses, and was proud of her prosperity. He died at an age when he was in his time of greatest helpfulness and in the maturity of his strength and manhood, respected and esteemed by all who enjoyed the pleasure of his acquaintance.

Willard Lee Eaton was born in Delaware County, Iowa, October 13, 1848 and was the oldest son of Arial K. and Sarah Eaton, who removed to Osage in 1856. He came of noble ancestry and inherited traits of character which fitted him for a life of honor and usefulness. Mr. Eaton received his early education in the common schools and graduated from the Cedar Valley Seminary in 1872, and the same year received the degree of LL. B. from the State University of Iowa. In 1874 Mr. Eaton married Laura R. Annis, who with a son, survives him.

Mr. Eaton was brought up a Democrat and until 1893 voted that ticket. Since that time, however, he has been identified with the Republican party. He served as mayor of Osage three terms and County Attorney of Mitchell County one term. He was a member of the Twenty-seventh, Twenty-eighth and Twenty-ninth General Assemblies and Speaker of the Twenty-ninth. He was elected State Railroad Commissioner and entered upon his duties in January, 1907, holding the office until January of the present year. He has been identified with all the Masonic bodies of Iowa, serving as Grand Master of the Masons in the year 1900-1. He was a member of Des Moines Consistory, Des Moines Shrine, and Osage Commandery of Knights Templar, Chapter, and Free and Accepted Masons.

Upon his admission to practice law Mr. Eaton formed a partnership with John B. Cleland, and in 1895 with William Salisbury, with whom he was associated at the time of his death. Mr. Eaton was recognized as the most conspicuously able and best equipped lawyer in this section of the State. His uniform success and the constant demand for his services were the evidences of his ability and attainments. He was favored as few men are, with great physical and intellectual strength and a disposition for ceaseless and untiring labor. His absolute and simple honesty was unmistakable, while his practical ability, concentration and fidelity to every trust won for him distinction, honor and wealth in his chosen profession.

It was not altogether in his professional life and practice that Mr. Eaton achieved conspicuous honors. As a man and citizen he was characterized by uprightness, sterling integrity, great kindness of heart and that charity which "thinketh no evil". To do a kindness, to lighten a burden, to assuage a grief, seemed to yield him a genuine pleasure. He possessed a delicacy of thought and action, a modesty of purpose, an instinctive desire to do good, which made him an engaging personality. He gave unostentatiously but liberally to charity. The church to which he belonged felt and appreciated the revivifying influence of his presence, example, and

benevolence. He was so modest in his giving that it escaped the scrutiny of journalism and of his most intimate friends. That was as he would have it. He was indifferent to having the results become even incidentally the subject of remark; that was his nature and desire. His home town was often the beneficiary of his thoughtfulness.

Mr. Eaton was a regular attendant of the Methodist Church in which he took a particular interest. He was also a trustee of the Upper Iowa University, a trustee of the Iowa Grand Lodge, director of the Farmers National Bank, and the Home Trust and Savings Bank of this city, and also a director in a number of trust and insurance companies of the State, and held membership in many clubs and social organizations. And all these institutions and organizations placed upon him duties and responsibilities which he discharged with intelligence and faithfulness, never forgetting his home town and the higher and better interests of its people.

In his family relations, Willard Eaton reflected and exemplified all the nobler traits of our common manhood, and many loved ones sit in sorrow to-day because of the loss of him whose talents he inherited and diffused, and whose life and labors were so fruitful of good results.

GEORGE G. FANCHER, of Lucas County. 1865-1911.

We have no date relative to the birth of George G. Fancher further than that it was in 1865. Mr. Fancher received a high school education, studied law in an office, was admitted to the Lucas County Bar, and commenced the practice of his profession in 1886 at Chariton, Iowa, where he continued an active member of the Lucas County Bar until his death June 19, 1911. In the practice he made a specialty of probate law. It is a matter of regret that the data at hand will not permit a more extended sketch.

J. W. FREELAND, of Wayne County. 1840-1912.

J. W. Freeland was born at Spencer, Indiana, in 1840, where he passed his boyhood days on his father's farm. In 1857 he came to Corydon, Iowa, with the intention of engaging in farming, but instead entered the law office of W. E. Taylor as a student, and was admitted to the Lucas County Bar in 1860. His professional activity was confined to Wayne County and vicinity. In politics he was a democrat and was influential in the councils of his party. Mr. Freeland was County Judge early in his career. His death occurred at his home at Corydon, Iowa, upon

the 27th. day of April, 1912, leaving his associates and many friends to mourn his loss.

JOHN FULLERTON HENDERSON, of Washington County.
1826-1911.

Mr. Henderson was born June 29, 1826, near Jacksonville Indiana County, Pennsylvania, and died at his home in Washington, Iowa, May 3, 1911. He received his education in the common schools of his native State, and upon arriving at manhood he moved to Illinois and settled near Aledo. Shortly after coming to Aledo he was elected Justice of the Peace, and commenced reading law, finishing his legal education in an office. He was admitted to the bar at Muscatine, Iowa, in 1864, and immediately thereafter moved to Washington, Iowa, and formed a copartnership with J. F. McJunkin, which copartnership continued until the death of Mr. McJunkin. The firm of McJunkin & Henderson enjoyed a large practice and was considered among the strongest law firms in Southeastern Iowa, Mr. McJunkin giving special attention to jury work and Mr. Henderson giving his attention to office and probate practice; although Mr. Henderson frequently engaged in the trial of contested litigation with an earnestness and force that was of material aid in determination of the cause. After the death of Mr. McJunkin, Mr. Henderson continued in the practice and for years held the largest probate practice of any lawyer in the county. Mr. Henderson was a most excellent citizen, was a painstaking and earnest lawyer, a man of strong convictions, and yet one who cultivated the amenities rather than the asperities of life; a man who leaves an unblemished reputation for purity and uprightness of life as a common heritage to relatives and friends.

WETTER H. JOHNSON, of Webster County. 1837-1911.

Wetter H. Johnson was born at Sidney Plains, New York, on July 24, 1837, and received his education at the Delaware Institute of Franklin, New York. He studied law in an office, was admitted to practice in 1868 at Binghamton, and at once entered upon his professional career at Sidney Plains, now Sidney.

Moving west he settled at Fort Dodge in May, 1868, where he practiced law until his death, which occurred at his home upon the 6th day of June, 1911.

Mr. Johnson made a specialty of probate law and enjoyed a good practice. For a time he was Deputy Clerk of United States District Court for the Northern District of Iowa.

WILLIAM MOORE, of Van Buren County. 1826-1912.

William Moore was born in Muskingum County, Ohio, September 29, 1826, and died at his home in Keosauqua, Iowa, January 29, 1912. He received his education in the common schools, read law in an office, and was admitted to the bar at Keosauqua, Iowa, on May 14, 1860, before Hon. John S. Townsley of Albia, Judge presiding, and there were present in court at the time of his admission the following notable lawyers: Geo. G. Wright, J. C. Knapp, Jos. F. Smith, H. C. Goodfellow, Chas. Baldwin, Geo. F. Wright, William Webster of the local bar, and Amos Harris, District Attorney of Centerville, Iowa. Hon. Robert Sloan, then a law student, was also present and in speaking of this examination says, "I was scared out of my boots at the thought of such an ordeal for myself later". All who were present at this examination have "crossed the bar", except Judge Caldwell and Judge Sloan. Mr. Moore represented the highest type of citizenship, took a deep interest in all matters affecting the public weal and the good order of society. His special solicitude was the schools of the community, and he gave to them much time and his best attention.

Early in life he was actively engaged in the practice of law, and for many years was the attorney and collector of Edward Manning, whose extensive business interests consumed the greater part of his time during the active years of his practice. After retiring from the active practice he was Justice of the Peace for many years, and it is said of his decisions that they were universally sustained by the courts. He was a good man, he fairly earned and rightfully held the confidence and esteem of his fellowmen, and the community in which he lived is better because of his having lived in it.

DENNISON B. PALMER, of Fayette County. 1843-1911.

Dennison B. Palmer was born in 1843, at Morrisville, New York, and died January 9, 1911, at Arlington, Iowa. We have no facts in our possession relative to Mr. Palmer's education, admission to the bar, or his achievements in life, further than he was Mayor of Arlington sometime during his career. It is with deep regret that the facts touching the life and characteristics are unknown to the committee, and for that reason this brief and inadequate sketch is all that can be given.

CARROLL WRIGHT, of Polk County. 1853-1911.

Carroll Wright was born in Keosauqua, Iowa, October 21st, 1853. He died at Denver, Colorado, October 28th, 1911. Mr. Wright was married January 18th, 1879 to Miss Nellie Elliott, daughter of the late Hon. John Elliott, who with their only child, Carroll, Jr., survives him. He was the son of the late Hon. George G. Wright, for fifteen years a Justice of the Supreme Court of Iowa, and later United States Senator. Mr. Wright removed with his father's family from Keosauqua to Des Moines, in the year 1865, and from that time until his death was continuously a resident of the city of Des Moines.

Mr. Wright received the Bachelor of Philosophy degree in the State University of Iowa in 1875, and graduated from the Simpson Centenary College of Law in 1878, and from the date of his admission to the bar he occupied a leading place in the civic and professional life of this State.

Carroll Wright was recognized by all who came in relations with him in a professional capacity as a great lawyer. He came from a family of great lawyers, whose lives and works form an honorable and important part of the history of this State. He had no specialty in the law, but in the height of his powers was a marked example of an able, accomplished, resourceful, and successful practitioner.

He came from sturdy pioneer stock,—forbears who represented those fine qualities of good citizenship that have made our commonwealth strong and great, and he always maintained old fashioned ideas of professional ethics and simple honesty in his dealings with his fellow men, that were not only refreshing but

an inspiration. His professional life, in his intercourse with his brother lawyers and the courts, was conducted on that high plane which earned for him the admiration and respect of all with whom he came in contact. A helpful and able colleague, a fair antagonist, candid and conscientious with the court, upright and honest with the jury, he represented and upheld the best and most revered traditions of the profession of the law.

As the representative of large corporate interests, much of his work was more or less of a public character, and his relations with men in political and official life were those of sincerity, trust, and confidence. He despised small and petty things; he never sought little and unfair advantages. He always took a broad, just, and conservative view of those public issues in which he was interested and helped to solve, and in all of those multiplied relations which brought him into connection with public questions and public officials, he never broke his word or betrayed a trust.

He took an active interest in public affairs. He gave much time and intelligent labor to our institutions of learning, and assumed the full responsibilities attendant upon good citizenship. Born in this State, living all of his active and useful life within her borders, always loyal to her interests and institutions, Iowa in his death mourns the loss of one of her foremost and best beloved citizens.

THE PRESIDENT: If there is no objection, the report will be received and placed on file, and will be printed in full in the proceedings.

It is the duty of the chair to appoint an Auditing Committee. I will appoint: Senator John T. Clarkson of Albia, R. M. Haines of Des Moines, and Charles M. Dutcher of Iowa City, as members of that committee. They will be prepared to report not later than to-morrow afternoon.

The Secretary has the report of the Librarian, Mr. A. J. Small, of Des Moines, which I will ask the Secretary to read.

LIBRARIAN'S REPORT

To the President, and Members of the Iowa State Bar Association:

As librarian for the Association, I herewith report those things that are of special interest to you relating to my official duty.

By far the most important undertaking during the past year has been the preparation and publication of the Proceedings of the Early State Bar Association, which began in 1874 and held annual meetings to the year 1881. The publication of this work was authorized by the Association at its last meeting. A committee, consisting of Judge H. E. Deemer, Judge W. R. Lewis, and Robert M. Haines, was appointed to make the necessary arrangements. In coöperation with and under their direction, I prepared the material and had it published by the Economy Advertising Company, of Iowa City. The volumes have been distributed to you and it will not be necessary for me to extol their value. However, I consider these early proceedings and addresses of much real merit, and I am glad they have been made available.

I will ask your direction as to the distribution of the remaining volumes, and unless I have specific instructions otherwise, I will follow the present arrangement as used in the distribution of the regular proceedings. If you desire a price placed upon the books, and that they be sold to libraries and others, I would ask that you name such price and designate to what extent I am limited.

The Secretary of the Association forwarded to me the surplus proceedings of 1911. From these I have sent copies to all the State libraries, and to most of the bar and law school libraries of the country, and to some of the State Bar Associations.

I am receiving requests from librarians to complete the files of the Iowa proceedings. Agreeable to your direction I have granted such requests so far as practicable, considering first, the scarcity of the volumes, and second, the importance of the library. Of some years, there is still an abundance on hand, but of the earlier years, there are very few. I am carefully guarding these remaining proceedings that they may be available for important emergencies in the future.

Respectfully submitted,

A. J. SMALL, *Librarian*.

THE PRESIDENT: This Association is under many obligations

to Mr. Small for the work that he has done. He has prepared, as I understand it, the indices of the various volumes we have had from time to time, including the indices of all the proceedings of the several meetings of the Association up to the present year. I think it is only fair that mention should be made of the amount of work Mr. Small has done in this respect.

The Secretary has a letter from the chairman of the Grievance Committee, Honorable J. B. Weaver, Jr., of Des Moines, which I ask him to read.

MR. H. C. HORACK, Sec'y,
Iowa City, Iowa.

My dear Sir:—I write as chairman of the Committee on Grievances of the Iowa State Bar Association to state in behalf of the committee that we have no grievances to report at the session of the Association to be held June 27-8, 1912. Please so advise the Association, and oblige,

Yours very truly,

J. B. WEAVER, JR.

THE PRESIDENT: The next order of business is the reports of special committees: The report of the Committee on Publication of Early Bar Association Proceedings. Justice H. E. Deemer is chairman of that committee. I received a letter from him yesterday, saying that his daughter was just graduating from Wellesley College, and that it would be impossible for him to attend this meeting. He sent his greetings, however, and asked to be remembered to the members of the Association.

Next upon the program is a paper, entitled, "The Juvenile Delinquent and his Treatment," by Judge Charles S. Bradshaw, Des Moines. A few days since, I received a letter from Judge Bradshaw informing me, on account of very serious illness in his family, it would be very doubtful whether he could be here. This morning I received a letter from him in which he stated that it was impossible at this time for him to attend. This illness has been of a very serious character and Judge Bradshaw is entirely warranted in not being present at this time. It would not have been right for him to leave those to whom he is bound by the closest ties.

There is also upon the program to-day a paper by Mr. A. J. Small, of Des Moines, entitled "The State Law Library". Some months since I requested Mr. Small to write a paper upon the Law Library of the State of Iowa. I felt that the Bar of Iowa was entitled to know more about that great collection of books. He prepared a very able paper, but about a month or more since he wrote me and stated he could not be present at this time to read it, and he wished to withdraw from the program. I felt that the paper was of such value as that it ought to be in our proceedings, and if there is no objection, this paper by Mr. Small will be read by title by the Secretary and published in the proceedings of the Association. It will be of value to every one of you, and I commend its careful reading by every member of the Association.

THE SECRETARY: The title of the paper is "The Iowa State Library with Special Reference to the Law Department".

**THE IOWA STATE LIBRARY—WITH SPECIAL REFERENCE TO
THE LAW DEPARTMENT**

Mr. President, and Gentlemen of the Iowa State Bar Association:

Little did the founders of the first public library realize the scope or far-reaching importance of such an institution. From a small collection of books bought expressly for a few, it has enlarged and become one of the great public service institutions, disseminating its influence toward higher ideals of education and better citizenship. The distinct idea of a State Library was first suggested as early as 1697, when Sir Francis Nicholson entreated the Maryland House of Burgesses in vain to provide a fund for the purchase of books for general reading. The only government action so far as known to such an end prior to the Revolution, was the foundation of the Colonial Library of New Hampshire. State libraries were established in New Jersey in 1796, South Carolina 1814, Pennsylvania 1816, and New York in 1818.

The Iowa State Library can not boast of such antiquity, though it may be considered ancient when taking into account the age of our commonwealth. In 1838, through the influence of the Delegate then in Congress, an appropriation of \$5000 was made by the general government for the purchase of books and for the

purpose of establishing a territorial library. This sum was made available and, under the direction of the Governor, was expended for several hundred volumes of a general nature. The books were to be kept at the seat of government for the accommodation of the Governor, Judges, and other territorial officers, but provision was made that "they might introduce citizens or strangers into the library, who shall have permission, during seasonable hours to read books except those not required by privileged persons." The library was kept open four hours on Tuesdays and Saturdays except during the session of the Supreme Court or the Legislature.

From this beginning the great Iowa State Library began its existence. For the first quarter of a century the library had varied experiences and made little substantial growth. During the early days, the librarianship appears to have been an appendage to some State officer or deputy, with the munificent salary of \$150 to \$200 per year, and bonds at \$2,000 to \$5,000. Governor Kirkwood, in 1864, made a strong appeal for the library, particularly for the law department, and succeeded in securing an appropriation of \$3,000 for the purchase of law books. From this time on, the Law Department received attention and has been built up to splendid proportions. As this paper is addressed to a body composed of the bench and bar of the State, I will confine myself to the Law Department, though no attempt will be made to overshadow, minimize, or in any way detract from the other departments of the State Library, for they are equally strong in their particular lines.

The Iowa State Library as now constituted consists of three departments, namely, Miscellaneous, Historical, Law and Legislative Reference.

The Miscellaneous and Historical Departments are located in the splendid new Historical Building across the street northeast of the Capitol grounds. The Miscellaneous Department consists of all works of a general nature, such as literature, general history, education, the arts and sciences, and general periodicals. In the Historical Department will be found war histories, municipal, state and national histories, genealogical works, and files of newspapers; also the Art Gallery and Museum. The Law and

Legislative Reference Department is housed in the Capitol building, in the large room on the second floor formerly occupied by the Miscellaneous and Law Departments.

The combined departments of the State Library consist of about 140,000 volumes. The library, as a whole, is rapidly taking rank with the first in the country, not only in the number of volumes but also in availability. Modern in many respects, it is in position to meet the general needs of our people. The Law Department is the great workshop for the legal fraternity of the State, and is an institution of which all may be proud, for it has reached a proportion of greatness that is excelled by but few States.

The State Library is supported wholly from the State revenues. The appropriation, as provided by the last General Assembly, amounts to \$6,000, but of this sum a portion is expended for legislative reference books and materials.

The increased appropriation from \$4,000 to \$6,000 for the Law Department has been highly advantageous to the library, and it is a pleasure to say that during this biennial period, the library will have been enriched by accessions of inestimable value. In selecting the books to be purchased for the library, the Board of Trustees has been very liberal, choosing a wide range of subjects, cosmopolitan in character, rather than restricting themselves to any particular class or locality.

The library already had much of the general works of a legal nature, both of this country and English-speaking countries abroad, but it was decidedly short on some of the greater and more expensive editions which should be in a State Library. To illustrate: An order has been given for the purchase of the "Commercial Laws of the World", which will consist of thirty-five large volumes and cost more than \$300. This work is a gigantic undertaking and is of great importance. It is to contain the general laws of the civilized world and be a complete logical treatise with commentaries upon the laws of the various countries concerned, prepared by eminent jurists and specialists, being printed in English as well as in other languages. It is the purpose of the publishers to issue a volume annually, giving the changes and additions to the laws of the different countries, thus

keeping it up to date. Recently an order was placed for the Annotated Reprints of the English Reports. Up to this time about 125 volumes have been issued. This set is a verbatim reprint of all the English law reports, from the early cases in Parliament to 1865, and will consist of about 150 volumes when completed and cost practically \$750. Each case is thoroughly annotated, and citations are made to other cases when cited, followed, distinguished or referred to. If the legal fraternity will bear this set in mind when having references to early English Cases, they may be materially helped by using the annotated edition. The Chitty, Halsbury, and Butterworth editions of the English Statutes, besides encyclopedias, digests, etc., are also being received as issued. Scores of other valuable sets of like importance, though not so extensive, may be found in the Law Department, and will prove helpful to the frequenter of the library in search of material.

Our range of subjects consists of everything conceivable that has been put in print. There are text books upon all leading subjects from nearly all the English-speaking world. It is the purpose of the Library Board to procure all general text books upon all subjects, and purchases are being made of many of the local State publications, principally those upon questions of practice, probate, real property, land title, taxation, and other important topics, especially so from the middle western States. Upon our shelves are statutes and digests from every State in the Union with subsequent session laws, and it might here be mentioned that the State Law Library has statute laws of the several States from the beginning to those of recent date, some of the States being practically complete.

Nor is this feature confined to the States alone, for we have nearly complete statute laws of Canada since the English acquisition, and all the provinces; likewise, England with all her possessions over the seas, and not long since we received from South Australia, session laws commencing with 1840 to the present time. The same may be said of Tasmania, New South Wales, Transvaal, Cape Colony, and New Zealand; also all the provinces of India, Straits Colony, Isle of Man, and Barbadoes. We have a splendid lot of the laws of Spain and Cuba; also translations

of the civil laws of Germany, France, Mexico, Japan, the Gentoo laws, and Code of Hammurabi, together with an original copy of the laws of Hindustan, and Code Napoleon. Of Hawaii, we have the old "Blue Laws" of 1840, practically all the laws promulgated during the monarchial reign, and all since it became a territory of the United States. We have the Philippine laws since the administration of our Government in those islands. There is also an interesting lot of old Irish and Scotch statutes, dating back to the twelfth century and on down to the loss of independence, together with fine collections of Roman, Civil, International, and Constitutional Law and History.

Our legal periodical section is extensive, containing most of the leading publications in the English language, as well as some in other tongues. We have all the West series, the L. R. A., besides the Trinity, and original law reports from all the States and England; also nearly all of Canada and other British possessions, including Transvaal and India. Of the Collected Cases, we have the American and English Annotated, American Bankruptcy, American and English Corporation, Federal, American Negligence, and American and English Railway Cases; in fact, all that are published in that form.

On the fourth floor of the library will be found an interesting and extremely valuable collection of Constitutional Convention Journals and Debates. These are very helpful in arriving at a true construction of a statute.

In the northwest corner of the second floor is located what is termed the "Literature of the Law", consisting of valuable treatises on the history and development of the law. Among these are Bentham's works of eleven volumes, Von Holst's Constitutional History, Selden Society publications, Newgate Calendars, various editions of the Magna Charta, the old "Blue Laws" of the New England States, Erskine's Speeches, Savigny's Roman Law during the Middle Ages, the Modern Legal Philosophic Series, and many other historical and literary productions. In this same alcove may be found one of the best collections of State Bar Association proceedings in existence. Neither time nor trouble has been spared in collecting these proceedings. They contain some of the best legal literature that can be had. Also,

there is here a splendid collection of legal biographies from the days of Bracton to the present time. Before concluding this list, I would call your attention to the abstracts and arguments of our own Supreme Court Reports. It may not generally be known that the Law Library has a file of these abstracts dating back to 1870. These volumes are becoming more and more appreciated, proving helpful and of great service in determining and explaining decisions.

The classification used for the law text books is by subject arrangement. For instance: all works under Corporations are placed alphabetically under that subject heading; likewise, Contracts, Evidence, Insurance, Real Property, Wills, etc. The State Law Reports are arranged by States, as are also the statute laws and digests. The original English reports are arranged in order as they are cited; i. e., "Coke", "Common Bench", "Vernon", etc. All public documents are arranged by States except certain special subjects which are classified and grouped.

The rules adopted for the government of the Law Department of the State Library are broad and liberal. We have no specialties or pet theories. The general policy is to run the library "wide open". This term is used advisedly and in its broadest sense. There was a time in the history of the Iowa State Library when one was not permitted to take a book from the shelves nor to enter the galleries without permission. A reader was compelled to take a seat at a table, tap a call bell, wait his turn, and not speak "above a whisper". The term "wide open" as here used means that all readers are welcome and that they have free access to the books, whether on the first floor or in the galleries. Courtesy is always extended, and a helping hand is at the disposal of all. Politics, religion or color are not considered, nor are they taken into account. All that is required is honesty and decorum.

It was thought wise to couple the Legislative Reference Work with that of the Law Department, as by nature they are co-ordinate and one is indispensable to the other. The trend of modern research has so enlarged its scope that, starting with the fundamental principles gathered from the realm of social conditions or economic reasoning, one would naturally follow them

through the enacted laws to their interpretation by the courts of justice. To successfully administer and for convenience, the Board of Trustees has advised and directed the correlation under the Law Department, of all legal works, sociological, economic, and general documents.

So far as direct law is concerned, the Legislative Reference Bureau has no legal existence, although the act of the last Legislature designates the appropriation for the use of the Law Department and Legislative Reference Bureau. It has been an outgrowth rather than a creation. The Legislature gives us an assistant for general and legislative work, but no other provision has been made.

It is our hope that the members of the next General Assembly may appreciate the work we are trying to do in this direction and give us additional assistants, enabling us to enlarge the work we are now attempting to do in this Bureau, which is not only helpful to the legislator, but also to you as citizens, lawyers, and jurists. Our aim is to be prepared and to have every conceivable general subject worked out, analyzed, digested, and put in convenient shape for quick and ready reference. We ask the co-operation of this Association in making the Law and Legislative Reference Department what it should be.

All new law books purchased by the library are in buckram binding when they can be had in that form. It is becoming the general rule among law book publishers to keep both the sheep and the buckram bindings in stock. The selling price is usually the same, though a slight difference is sometimes made in favor of buckram by the booksellers. We make it a practice to rebind worn and broken volumes in buckram. A good grade of buckram is more desirable than the poor quality of sheep generally used in modern bookmaking. The present tanning process is highly injurious to the leather, causing it to either become hard like paste-board or to decay and crumble. The destructive gases too prevalent in the atmosphere of the West are hard on all book bindings; but, as they seem to have the least injurious effect upon buckram, we have no hesitancy in recommending it as the universal law binding. Too many colors should be avoided, but this is a matter of taste and is easily obviated.

It has been my purpose to outline to you some of the salient features of the State Law Library. Great as it may appear to you and great as it really is, yet there are many things we should have and there is much we must do before we shall make it worthy of the good people of our State. If this paper has been in any way helpful or suggestive, I shall be gratified and count it a pleasure to have had the honor and privilege of presenting it to you. In closing, I wish to assure you of my continued best efforts as a public servant, and my desire for even greater accomplishments in the advancement and the opportunities of the legal profession in the commonwealth of Iowa.

THE PRESIDENT: Senator William Berry, Chairman of the Board of Parole, has a paper upon "The Administration of the Indeterminate Sentence and Reformatory Law", which is on the program for this afternoon. I have requested him to read that paper this morning, so that we may expedite the work of the session and be out in time this afternoon. As the author, and I say this in no sense of self-pride, I have taken a great deal of interest in the indeterminate sentence and reformatory law and its administration. I am satisfied, from conversations I have had with various members of the bar over the State, that there is a great deal of misinformation running at large in reference to this law, and the administration of the law by the Board of Parole, and so, by virtue of the authority vested in me, I have taken the liberty to ask Senator Berry to prepare a paper upon this subject, which he will read to you.

**THE ADMINISTRATION OF THE PAROLE LAW:
THE INDETERMINATE SENTENCE**

Mr. President and Members of the Iowa State Bar Association:

For more than sixty years Iowa had been administering punishment to those convicted of crime without any material change of plan or statute save only in prison methods and an unauthorized parole which had in recent years been adopted by the Chief Executives. The Thirtieth General Assembly appointed a Commission consisting of one from the Senate and two from the House, authorizing it to investigate the workings of the in-

determinate sentence and reformatory systems in the States where the same was then in force and directing it to report to the Thirty-first General Assembly with recommendations as it might see fit to make. This Commission was composed of Hon. C. G. Saunders from the Senate, Hon. M. L. Temple and Hon. F. F. Jones from the House. During the two years following, this Commission made a most thorough and painstaking investigation of the subject and visited many of the prisons of the country, studying the systems in operation in other States, conferring with men of practical experience in the management of prisons and prisoners, and men who had given time and thought to the study of the criminal class and the best methods of handling it for the good of both the criminal and the State. This Commission filed its report and recommendations with the Thirty-first General Assembly on the 18th day of January, 1906. As a result of this investigation, report and recommendations, and the discussions aroused thereby the law providing for the appointment of a Board of Parole, defining its powers, prescribing its duties and authorizing the parole of criminals convicted of felonies and committed to prison, was enacted by the Thirty-second General Assembly. By this Act provision was also made for the establishment of a Reformatory where persons who had never been convicted of a felony before and were under thirty years of age should be confined, while all others convicted of felonies should be confined in the Penitentiary. By this Act it was also provided that in all cases of conviction for a felony the sentence should be for the maximum time provided by the statute for that offense.

It was no doubt intended that the Reformatory should, as soon as possible, be organized along modern reformatory lines to the end that the young prisoner who was serving his first sentence should have every opportunity possible to encourage him to change his course of life and that he should serve the shortest time consistent with the effort for his reformation and the protection of society. Soon after the enactment of this law and my appointment to a place on the State Board of Parole, I was asked to prepare a paper discussing the new law, the same to be read at the 1907 session of this body. For more than a third

of a century I had been in the active practice of my profession in this State, sometimes aiding in the prosecution of men accused of crime, seeking to secure verdicts of guilty; sometimes defending men accused of crime, seeking to secure verdicts of not guilty, in the one case to get men into prison, in the other to keep them out. I had given little thought as a rule to the question as to how the prisoner was to be handled after he was sentenced. My attention had been called to some of the theories on which it is claimed punishment was justified; punishment for retribution, for deterrence, for reformation; but I had not given a modicum of thought to either. I had noted discussions concerning classification of criminals and of the criminal class as distinct from the non-criminal class, I had not given studious attention to any of these questions; I did not think I was then fitted to do credit to myself or be of benefit to the lawyers of Iowa by anything I might say at that time concerning the new law or the questions growing out of it. I therefore declined the invitation and Senator Saunders, a member of the Commission referred to, now our distinguished President, and who had given much time to the study of some or all of these questions, addressed the Association in a worthy and learned manner.

When I was asked this year to address you I felt that I was under obligations as a member of the Bar of Iowa, having spent five years in the work of the Iowa Board of Parole, to report to you as to the administration of the law, and give you some observations which I have gathered from the study I have given the subject and the work of dealing with convicted criminals. Be assured, however, that five years does not make a post-graduate in this work. The man who thinks he can master the subject of the method of handling criminals in a way to produce the best results for the criminal and society, both of which must be considered, after reading a few books on penology, criminal law and criminology, crime and its causes, heredity, insanity, imbecility and environment as effecting crime and criminals, and then after talking with a few prison keepers and prisoners, can tell how best for all concerned to extend or withhold clemency, is simply advertising his own feebleness. While the average lawyer has given little time to the study of these questions and this whether

he is in the practice of his profession as a trial lawyer or in the higher work of administering the law from the bench, yet I may be pardoned if I assert that no class of men are in my judgment so well prepared to grasp these questions, and comprehend them when they do give them attention, as the lawyers. They are not so apt to be extremely theoretical on the one hand, or extremely sentimental on the other, as many others who write and talk concerning them. I therefore consider it most appropriate that you should know from first hand of the workings of the Iowa Board of Parole and have the benefit of what suggestions have come to that Board in the five years of its work, that you may if you desire give them such consideration as you may think they should have, or that by them you may be incited to the study of these questions to the end that the State may have the benefit of your thought and action.

Under the provisions of the statute providing for the parole of prisoners, a man may be paroled any time after he enters the prison, and under the provisions of the Act of the Thirty-third General Assembly, on the recommendation of the Judge and County Attorney he may under certain conditions be paroled by the Board before he is committed to the prison, and under provisions of the Act of the Thirty-fourth General Assembly, he may be paroled from the bench, under certain restrictions, by the Judge who tried him. I believe the last two Acts referred to constitute legislation in the right direction and there are many times when men may with profit to themselves and to the public be paroled from the bench; I think, however, that different provisions should be made for the supervision of the paroled man when paroled from the bench than those provided in the Act referred to. Either that each county should have a parole officer to whom such men should report and whose duty it should be to have supervision over them or that when parole from the bench is ordered, the same should be reported to the State Board of Parole and the man taken charge of by it, and thereafter he should be in their charge and under their control as any other paroled man. Supervision of paroled men is absolutely essential to good results and the State Board must always be organized to give it, and their business is to deal exclusively with the ques-

tion of paroling and supervising, while with the Judges of the State and the Sheriffs, and the Clerks of the Courts, or with county parole agents, the work of supervising and looking after paroled men must be secondary. I deem this suggestion at least worthy of consideration.

Under the parole laws of some States there is a minimum as well as a maximum to the sentence of the court. Usually one year is the minimum for men sent to the reformatory prison. This is probably because of two reasons; first, because as a rule if a man should be sent to a reformatory at all one year is short enough time to impress the offender with the seriousness of his offense and the dignity of the law; second, because one year is short enough time in which to become interested in or at all proficient in any line of industry. The reformatory should always be so organized as to furnish some line of work to the inmate, that is, as near as may be, suitable to his taste and natural bent and ability, to the end that his interest and ambition may be aroused and he will have something he is in a measure fitted to do when he is released. The Iowa Board therefore decided to take up cases where the maximum sentence is for more than two years at the end of one year from the date of commitment to the prison and those where the maximum sentence is two years or less at the end of six months.

The investigation of the case of a prisoner does not depend on anything he or his friends may do or not do; it is not necessary that he should employ attorneys or petition the Board or the Governor. The case of everyone admitted to either the Reformatory or the Penitentiary is placed at once on the docket of the Board and the investigation begins on his admission to the prison and when the time comes for consideration each case is taken in its order, and some conclusion reached as to what should be done, before it passes from the list of live cases. The first thing required is a statement from the prisoner made in answer to printed questions propounded to him as soon as he is in the prison, which questions are formed with a view to getting from him a short sketch of his life, his ancestry, his own record, whether criminal or not, previous arrests and convictions, the physical and criminal or non-criminal record of his immediate

ancestors and of his family, his own account of his crime and the names of those he desires us to communicate with in order that we may be better informed as to who he is and what he has been; he is given opportunity to refer us to persons who will present him in the most favorable light in which he is entitled to be considered. It is also by statute made the duty of the Clerk of the Court to transmit to the Board certified copies of the indictment and the minutes of the testimony taken before the grand jury in the case of each man convicted and sent to prison. The statute also requires the Judge who tried the prisoner and the County Attorney who prosecuted him to give to the Board, when asked, all the information they have that will enable the Board the better to understand what to do with him. This information is frequently most helpful, sometimes of little value and by some Judges and County Attorneys requests are given no attention.

In a few instances the latter has been the result because the Board has found itself unable to follow the recommendations of either in fixing the time of prison service. This condition is, however, much improved as compared with the first years of the operation of the law. Some Judges were at first loth to concede that the law was constitutional or the best method of fixing the duration of punishment, however, because of repeated decisions of our Supreme Court the first question has been settled and while no doubt some yet believe that the trial Judge is the man best fitted to determine the time a convicted man should suffer imprisonment, (and this may be true — I will discuss that later), yet it would seem that, whether the bar fully approves the rules and practice of the Board the principle of entrusting the fixing of the time of punishment to a tribunal other than the tribunal before whom the prisoner was tried is more generally approved than it was. The County Attorney is best fitted of anyone connected with the prosecution to give valuable information to the Board concerning the prisoner, the Sheriff next and then the Judge. They can in most cases be most helpful, and they owe it to the prisoner, to themselves and to society to secure and transmit to the Board all the facts concerning the prisoner and his offense they can obtain, the impression they formed from their observation of him and contact with him as they may be affected by the facts elicited on the trial or otherwise.

Correspondence is then begun by the Board with the references given by the prisoner and with any others whom we are led to believe can give us information. We bring before us before the expiration of the six months or year as the case may be, each prisoner, and give him opportunity to give us any information concerning himself, his own explanation of his success or failure in life, his excuses for his crime or criminal career, or to present anything he may desire in his own behalf, and subject him to such examination or cross-examination as we believe beneficial in trying to arrive at a just conclusion in his case, both for his own good and the good of society. New lines of investigation are as a result of these examinations frequently suggested, which we endeavor to follow and often such examinations result beneficially to the prisoner and beneficially to the State, often greatly to the undoing of the prisoner. The man who has been well or even fairly well raised, who has for the most part led a good life, will not hesitate to tell it; the man who has a bad record but is really sorry for it, will respond as a rule; the man who has such a record as that he knows the revelation of it will condemn him, or does not desire to reform, looks on this investigation as a hardship and his friends sympathize with him. We have been reminded that it is wrong to ask a man to incriminate himself, that this is not allowed in the courts, and should not be indulged in by the Board. Those who think thus do not discriminate between the condition of a man not yet convicted of a crime and one who is already convicted. The Board of Parole is dealing with men presumed to be guilty, because the court has said they were guilty, while the court is dealing with men presumed to be innocent. The man who has been found guilty of crime has lost some rights he possessed until he had been so found, and it is not for him to demand or expect that the State in dealing with him while in its custody, thereafter will deal with him as an innocent man or accord to him the rights of an innocent man, unless he is able to establish against the presumption of guilt the fact that he was innocent and there was for some reason for which he was not to blame, a miscarriage of justice. Let me digress in passing long enough to remark that while much is written and said about the probability of innocent men being convicted of crime and

much sympathy aroused for the man suffering at the hands of over-zealous prosecutors or unscrupulous police officers or the passion or prejudice of the people of the community in which he was tried and that passion or prejudice has reached the jury box or the Judge and biased and prejudiced them to such an extent as that an innocent man has suffered, yet cases of the conviction of an innocent man, in my judgment, from a long experience at the bar, as well as my experience on the Board of Parole, are rare, and in Iowa are very rare. Of course, it is possible for such a thing to occur and I have no doubt it may have occurred in Iowa, and when it has occurred executive clemency should be at once extended no matter how many courts or juries have passed on the case.

When we have secured all the facts or such facts as we are able to obtain by these means and others that may seem likely to disclose facts, we parole, continue to a definite date, which date is the time when from what we then know, the case should be again considered, and which is frequently the time when we parole unless new facts arise, or conduct and disposition and failure to improve in prison lead us to think good results will not follow, or we deny parole which means to the prisoner and is intended so to mean that in our judgment the maximum sentence should be served. In order that mistakes may be corrected or a man may not be forgotten in case new facts have been brought to our attention that demand a different disposition of the case from the first made, we as often as two times a year review our entire docket considering the case of each man still in prison on the maximum sentence, not infrequently advancing men for earlier consideration than first determined and sometimes being compelled to make the punishment more drastic. The Board is seeking as diligently as it can to find the man who can be helped and to help him and hope to be as diligent in seeking to save the State from having turned loose to prey on its citizens men who should not be, and have no right to be, at large. Having done these things we parole such men as we believe give us promise of better lives at as early a date as possible consistent with the character of their offense and the promise they give of reformation.

From what I have said you can readily understand that much

the larger per cent of those who can hope for parole must not only come from the first offenders, but from the younger men and women. There is one thing that we cannot in Iowa take into account to any considerable extent, and that is proficiency in work done by the men while in prison. The larger number of men and boys from sixteen to thirty years of age going to the reformatory at Anamosa have no occupation, trade or profession. They are only capable of performing the kind of labor that requires the least skill. While in the reformatory they should have opportunity to make themselves reasonably proficient in some kind of occupation or trade that will fit them for employment when they are released. This by many who have had most experience in dealing with boys and young men in prisons for the first time and who have given much thought to the subject, is deemed one of, if not the most essential thing in the organization of a reformatory penal institution. Our State has done so little in that line that it might be said she has not made a beginning. In a small way there are two or three industries that offer opportunity for a few men to learn how to work at something above common labor, and when a boy has done well in one of these departments and been kept until he can be recommended as having some degree of skill in his work, it is not often difficult to find a place for him on the outside, and not often that he proves derelict; again a boy who has an opportunity to engage in skilled labor for which he is suited, becomes interested, his ambition to do something is easily aroused, he is more contented in his confinement.

The Board will not parole a man, when they know it, who is not able to make at least a fairly good record in the prison, that is, in general conduct and observance of the rules of the prison. We understand it to be one of the conditions necessary to the paroling of a prisoner and finding him employment and being at the expense of his supervision while on parole, that it should appear there was reasonable grounds for believing he would likely profit by it and make good, we are not of the opinion that a man who cannot keep the prison rules gives promise of good results. It must not be thought, however, that a good record is always a good recommendation for a man. The shrewd pro-

fessional and premeditated criminal does not as a rule have trouble with the warden and his officers, and many times if he violates the rules he has the ability to deceive the officer or conceal the offense. I do not here condemn the merit system, for our experience is not yet sufficiently extensive to justify that, in the face of the claims of many who lay much stress on good prison conduct as one of the strong evidences of reformation, but from the experience the Iowa Board of Parole has had, good prison record is not much of a factor to use in determining what a man is or wants to be. Bad prison record is good cause for keeping in, but good prison record is not always good cause for letting out. Many boys come before us who have reports against them. In many instances these are not evidence of wilful disobedience. It is not easy for a boy from sixteen to twenty years of age to always remember to keep his mouth shut, or to refrain from doing many things which are in violation of the rules and which the officer must insist on being obeyed, and many times such should not be held too rigidly against him.

Under the laws of Iowa, before a man can be released on parole we must have a contract from some suitable man that he will furnish or find employment for him for at least six months, and we, as far as we can, secure this for the entire parole period, one year. The contract must also provide that such man will have supervision over the man and keep sufficiently advised concerning him and his conduct as that he can verify his monthly reports, and if the paroled man needs attention from the officer or a visit from the agent, or is not keeping the obligations of his parole, will at once notify the Secretary of the Board. The securing of these contracts is difficult. The reasons are obvious and need not be rehearsed here. We find that in the fall and winter it is most difficult to secure employment. This to some considerable extent would be avoided if we were teaching more men something besides shoveling coal and quarrying rock. There is danger in the factory, machine shop, or with contract or public work to the paroled man who goes to do common labor. The tinner, the tailor, the barber, the stationary engineer, the printer, the book-binder, and such like, can be placed much more readily and with much greater probability of good results. When a man is placed

and all the precautions possible are used it is frequently almost as much trouble to keep the employer or guardian in line as the paroled man. It is most difficult to get the average American to understand that YES means YES, and NO means NO, and it is sometimes difficult for one's self to give full force to the terms. When paroled and located, then begins the test and then the boy or young man needs encouragement and the helping hand of the representative of the State, for the first few months will, as a rule, determine whether the effort in his behalf will result in good or bad.

One of the chief objects in selecting an employer should be to find a man who will in his attitude toward him, his disposition to encourage, his recognition of the fact that he has a man under his care, who to some extent at least, has failed in life, and that he has an opportunity to aid in an effort to build a man and a good citizen and appreciates the opportunity, a man who will not under any circumstances reproach the man under his care by reference to his past life, nor allow it to be done by coëmployes or his family, such is the man needed to be placed over the paroled man. Alas, however, it is most difficult to find enough of such men to meet the demand in Iowa. It is very easy to lecture and preach and write about our duty to the unfortunate boy who has gone wrong, and the duty of society toward him—sentimental talk is popular—it sounds well, but it too frequently occurs that when you call on such persons to aid directly in caring for those boys, the enthusiasm rapidly oozes out. It should not be that a man would have to go out to some one, on his leaving prison on parole, whose only interest in him is in the work he can do, but it is impossible to avoid doing so. The Iowa Board has called on men for aid in caring for men we had concluded to parole, who had urged us to parole sooner and could not even get an intimation that an effort would be made to help. The best supervision that a man out on parole or suspended sentence can have is an employer who takes from an unselfish standpoint an interest in him; next the paroled man needs to feel and know from what they seek to do for him that the man or men responsible for his release and the giving him opportunity to go at liberty have an interest in him and want him to succeed,

and that this desire is prompted from some higher motive than simply a desire to make a good showing in a table of statistics. The man who really desires to improve may be discouraged if he becomes impressed with the notion that a Judge or Board of Parole or Chief Executive are not honestly working with that end in view. The men who deceive Judges, Parole Boards and Governors and who have no real desire to do any better than they have before, who seek liberty under a false pretense, will be the first to accuse those whom they have deceived of lack of interest in them, of being hard-hearted and exacting, but this is no excuse for any slacking of effort in behalf of the paroled man, to the end that the really worthy man may not be overlooked.

It is not possible for Judges, Boards or Governors to give the attention to paroled men which they need, hence much of it must be done by probation officers, parole agents and such like persons, and the selection of these persons is no easy task. The Iowa Board has found an idea prevailing that some person who had had experience as a police officer or prison man would by reason of such service be specially fitted for such work. Very good, if other elements of fitness abound, but alone, rather a reason why such should not be selected than otherwise. Some seem to think the student of penology or the sentimental agitator or the sympathetic excuser of crime, suitable persons for such position. Not at all, rather the opposite. The parole or probation officer should, of course, be kind and gentle and full of human sympathy and ready to forgive the repentant man and help him, but it goes without saying that he should be firm, and if needs be emphatic, and above all he should be a man who recognizes that it is a serious thing to commit an offense against the State, that a felony is a crime, and when the offender is apprehended he must be dealt with as an offender. Such a representative of the Judge, Board or Governor can do much in personal visitation to aid the man who truly wants to be helped and the force of such officers should be sufficient to keep in close touch with the men on parole or probation.

The above observations are such as have been suggested by the experience of the Iowa Board of Parole since its organization July 1, 1907, which experience is yet too limited to warrant the

members in concluding that they have yet solved many of the perplexing questions involved in administering the parole system. Results, however, have been such as to justify the Board in believing that many young men can be helped and many saved to good citizenship by the parole system properly administered in connection with the indeterminate sentence.

During the first three years of the work of the Iowa Board 221 paroles were issued. Of these, 43 violated their paroles, 19 of these derelicts were returned to prison, and 24 had not at the close of the period been apprehended. It is probable that the unapprehended violator is, however, less likely to commit another offense, especially in Iowa, than if he had not been paroled, so that while all that was hoped for in the effort to help has not been accomplished, still some good has resulted. Of this 221, 90 were serving under the old law a definite sentence as fixed by the judge, and 131 were serving the maximum or so-called indeterminate sentence. Twelve of the 221 had served in prison before, leaving 209 serving their first sentence, only one man serving a maximum sentence under the new statute, had ever served time in prison before. There is small hope of reformation in the man who has once served time and comes back for another offense. Since the report of the Board July 1, 1910, there have been paroled more than three hundred and the per cent of delinquents has increased some, probably to between twenty-three per cent and twenty-five per cent.

In all cases where men had been paroled from both the definite and maximum classes to June 30, 1910, in which the sentence is for the same crime, except two, the determinate had served a longer average time than the indeterminate, yet in such cases there was by action of the Board a shortening of the time fixed by the judge who pronounced sentence. For instance, in that three years there were paroled four who had been sent under the definite sentence for the crime of manslaughter and the average time served by them was two years, eight months and twenty-seven days; two were paroled who had been sent under the indeterminate sentence for the maximum of eight years, and the average time served by them was one year, two months and sixteen days. Where the prisoner was guilty of

the crime of larceny, 38 indeterminates were paroled, average time served, one year, six months and twenty-four days; eleven determinates were paroled, average time served, one year, six months and twenty-nine days. The average time served by the first offender and the young man under the parole system is shorter than under the old law, but the average time served by the repeater and the old offender is longer and so much longer that the average time of service of the entire prison population is longer than it was under the old system of determinate sentence. It is this condition of things that is partially responsible for the increase in prison population and largely responsible for the complaint of the prisoners and their sympathizers. Under the old system there was little discrimination between the old and the first offender, between the accidental and premeditated criminal, between the man who wanted to do better and the man who had no desire other than to get out and resume his criminal life. There is still not as much discrimination as there should be for the reason that after the use of all the means at the command of the Board and the officers of the law, it remains impossible many times to reach the facts, and mistakes are easily made and are made both ways.

The protection of society is the real reason for the enactment of criminal statutes and the enforcement thereof. Many men violate the statutes who are not real criminals, or do not want to be, and society does well and acts humanely as well as for its own protection, when it does all it can to seek out such, and in every reasonable way endeavor to make out of them good men and women. There is, however, a sentimentalism predominating in the minds of many that tends to make a hero out of every man accused of crime, and it would seem sometimes that the more outrageous the crime the greater the hero. Then for some reasons, I know not why, the public lurches from one extreme to another and when a man is accused of a crime, even before he is proven guilty, will determine his case and consign him to the bastille or gallows. If the latter is not reached, it will not be long until many of this same public out of sympathy for wife, or children or parents, or for some other unknown reason, possibly only because about every so often they must change their

minds, will as strenuously insist that the enemy of society shall be turned loose to prey upon it again. A few years ago the press of this country gave publicity to the fact that a woman was to be hanged in one of the States of this Union, and forms of petition were printed addressed to the Governor of that State asking for a commutation to a life sentence; all on the theory that a woman should not suffer capital punishment. These petitions were numerous signed in Iowa and some Iowa newspapers assisted in their circulation and favored them. Recently as I am informed, a similar effort was being made for a boy of fourteen years, sentenced in a sister State to suffer the death penalty, alleging as reason therefor that a boy so young should not suffer death, and that effort was supported by many people and some newspapers in Iowa. I do not favor the death penalty, but where it is the law and the proper authorities have ordered it inflicted the sentence of the court should be carried out, unless there be a good and sufficient reason for executive interference, and the fact that the condemned is a woman or a boy is little reason why it should not be. It is with most people sentimentalism run mad and with some the taking advantage of an opportunity to find fault with the existing order of things, sought when they think it will meet with some degree of approval by the unthinking.

This leads me to refer to the rule which I think should be a general guide in administering the law in case of sentence for the more serious crimes against the person, life sentence for murder in the first degree, for rape, either forcible or statutory. The law in Iowa is that the jury hearing all the evidence shall in case of verdicts of guilty of murder in the first degree determine whether the sentence shall be death or life imprisonment. The man who has been guilty of deliberate and premeditated murder and who has by the jury which tried him, considering that our law provides the death penalty in such a case, already had great clemency extended to him when the jury has fixed a life sentence in a prison instead of death. By his act, in the minds of many he has forfeited his life, by some juries trying him he would have been condemned to die; by the favor of the jury which tried him he has only forfeited his liberty. The

years he may yet live he can employ in reflection and repentance. Until the people of this State shall see fit to change the law there is left no reasonable excuse where the verdict is entirely justified, for interference with a life sentence for murder in the first degree. There are many reasons why one would like to extend clemency—the heart-breaks of family and friends, the satisfaction of being permitted to die a free man, the probability in many cases of good citizenship for the remainder of the prisoner's life, all combine to cause the persons in whose hands is placed, in any part, the exercise of clemency to desire to extend it. However, it must not be forgotten that human life has been sacrificed, that the sacrifice was without just cause, that the executioners were the judge, jury and chief executive, that in many cases it was the result of inexcusable passion and spirit of revenge, and in many cases committed when engaged in the violation of other laws than those against the taking of human life, that a lax administration of the law in the case of inexcusable murder will result as it always has in the ignoring of the rightly constituted authorities and then that frequently the innocent may suffer and always society will suffer. These things are worse than deprivation of liberty, worse than loss of association on the outside with family and friends, worse than death in prison; these things must all be considered in determining what should be done with the prisoner serving life sentence for murder in the first degree.

It may be true that the man who intended to take human life and by accident failed is equally guilty with the man who succeeded in his effort, but our law does not recognize it, and the Chief Executive and Board of Parole are charged with the execution of the law as the people of the State have made it. Life sentence for rape is a maximum, or indeterminate sentence, and in some cases where honest resistance has been overcome by brute force or where innocent childhood has been defiled by the over persuasion of full grown manhood is none too long. The cases are not infrequent where the perpetrators of the crime have forfeited their right to ever again mingle with their fellows, but this is a crime that, because of varying facts and different degrees of guilt, admits of varying and different grades of punish-

ment, careful investigation should be had that unjust punishment may not be inflicted.

I have not time nor is it properly a part of this address to enter upon a discussion of the classification of criminals, or the cause of crime. Suffice it to say that scientific investigators of crime and criminals differ as to these matters, and there are those who study crime and criminals from a more practical standpoint and personal contact with and observation of the criminal who widely differ from those who investigate from the scientific standpoint. One ascribes much to heredity, one to lack of control and discipline by parents and those entrusted with the care of the criminal in childhood as a result of which he grows up with a wrong idea of his relation toward society because of which he soon develops into an enemy of it and the man who under different childhood training would have become a law abiding and useful citizen ends in a criminal career; one puts emphasis on environment, one on physical defects which result in mental unbalance and so on through the list. No doubt all of these things are potent factors in the producing of a criminal. In some cases all of these may combine, in others part only may contribute and in still others only one may result in the making of a criminal. Some, no matter what the cause or causes that have resulted in criminal acts have reached a place where they have no desire to change their course of life. Some who have at times better impulses and desires are no longer able to change their habits; some are yet in the class that can be saved to useful citizenship. It is not possible to readily differentiate the one class of convicted criminals from the other.

Accurate life history, knowledge as nearly as it may be obtained of the causes which have contributed to his being in prison, close study of the man and observation of him, all are necessary to enable one to know how the prisoner should be dealt with. No trial judge can satisfactorily investigate each individual case for he has neither time nor opportunity to do so and in many cases the Board must fail in the investigation, because of the many ways a prisoner hedges about the facts of his life history. The business of the court should be to see to it that men accused of crime should if guilty be found guilty, if innocent be

acquitted, and when I use the term court I include all the elements that are necessary to constitute a court in the trial of the criminal—the Judge, the Prosecuting Attorney, the police officers and the jury. To another tribunal should be left the work of determining punishment. That tribunal in Iowa is the Board of Parole and the Chief Executive, who is yet left in the full possession of his constitutional power to extend clemency whenever he wills and to whomsoever he may deem deserving of it. The law creating the Board of Parole, wisely as I think, provided that of the three members one should be a practicing attorney, but as to the other two there were no requirements save one, that they should not both be of the same political faith as the attorney.

The Governor making the first appointment of this Board selected as the law required a practicing attorney and on his own motion one of the others a practicing physician and the other from among active business men, not in professional life, and subsequent Chief Executives have, as I think wisely, followed the same distribution. There should always be a medical man on the Board and he should be one who has been in the active practice of his profession and also a representative from outside both professions. Whether or not such a tribunal should be enlarged in order that a range of wider information may be included and the prisoner and the State have the benefit of the consideration of his case from more viewpoints is worthy of consideration of the student and the law making power. From these observations you may have readily reached the conclusion that I believe in the indeterminate sentence in all cases of the conviction of a felony.

The parole system will prove a failure if it does not result in reclaiming a per cent of men who have fallen into criminal habits. The time will not come when one object of sending men to prison is not punishment, and it should not come. Another result sought in depriving men of their liberty is and always should be to deter others and through fear of imprisonment keep some from committing offenses against the law. The higher and better object, however, should be to reach the better natures of men. There are among every considerable number of men who

have been overtaken in fault and committed to prison, always a per cent who do not mean to be criminal, who with proper teaching, encouragement and environment, can be aroused to an honest ambition to become better than they have been and a per cent who cannot be reached and who are so given over to lives of crime either voluntarily or involuntarily committed, that, humanly speaking, they cannot be reformed and improvement cannot be expected, and a per cent of men who have so outraged society and violated the laws of both God and man that they have forfeited all right to be permitted to associate with their fellows. Society for its own protection should put such persons out of circulation and prevent them from mingling with and contaminating their fellows. On one thing I think all students of criminology now agree or are nearing agreement, and that is, that the criminal must be dealt with as an individual. There must of course be given some consideration to harmony in the administration of punishment, at least until there is better recognition by the public and by the law making power of the fact that the service of a certain time in prison by one is no indication that another should serve the same time for a like offense. Some hold to the biological theory of crime, that there is a criminal class with inherited criminal tendencies, mental and physical deficiencies, so that its members are necessarily criminal, and such directly or indirectly refer nearly all criminals to this class. Lombroso was the exponent of the extreme of this theory. William Allen Pinkerton is quoted in a recent magazine article as taking direct issue with this theory and saying, "Criminals are quite like other folks." Mr. Pinkerton's theory is that there is no distinct criminal class. He says:

No one can study criminals at close range and believe in the existence of a criminal class. * * * Humanity is not thus divided into criminals and non-criminals. There is but one classification that can be made, the class of those who have committed crimes and the class of those who have not committed crimes. Within certain limits, ranging with the individual, every human being is a potential criminal.

Mr. Pinkerton is a distinguished exponent of the extreme of the theory opposed to that of Lombroso. Professor Charles A. Ellwood in a recent magazine article reviewing Lombroso's

work entitled "Crime, Its Causes and Remedies" and the biological theory of its distinguished author in general, while criticizing him and pointing out the weak places in his argument, closes a learned and helpful article with the following paragraph:

One thing Lombroso's work has definitely accomplished, and which will remain forever a monument to his name, and that is, that the criminal man must be studied, and not simply crime in the abstract; that the criminal must be treated as an individual and not his act alone considered. The individualization of punishment, which all humanitarian and scientific thinkers are now agreed upon, is something which Lombroso's work, more perhaps than that of any other man, has helped to bring about. While there may be many errors in Lombroso's theory of crime, he set about to demolish a much more absurd theory. That the theory of the "classical school," that crime is the product of an arbitrary free will, and the resulting criminal law and procedure, received from him a death stroke is now beginning to become apparent to all intelligent observers.

I commend to your reading Lombroso's work referred to above and recently translated and published in this country under the direction of the American Institute of Criminal Law and Criminology, also the interview of William Allen Pinkerton as reported by Frank Parker Stockbridge and published in Hampton's Magazine for May, 1912, also the article referred to of Professor Charles A. Ellwood, professor of Sociology in the University of Missouri, published in the Journal of Criminal Law and Criminology, Vol. II, No. 5, page 723, issued January 1912. From any conclusion that can be reached by the study of any of these theories or from any intermediate theory, there is no way of avoiding the final determination that as said by Professor Ellwood, "The criminal man must be studied and not simply crime in the abstract; that the criminal must be treated as an individual and not his act alone considered." To select, educate, reward and help those who will respond to good impulses is the first object of the system of paroling convicted criminals.

To keep in seclusion such as will not or can not respond to such influences I conceive to be the second object of the parole system and the second is not much below the first in importance. The world for centuries looked on imprisonment as punishment

only. It is impossible for mere man to say how much punishment should be inflicted on his fellow man because of his crime; mere man can, however, come more nearly to a just conclusion on the question of whether a man is fit to be allowed to mingle with his fellows, whether he is a man of such criminal instincts and vicious habits as that he is a menace to society and his influence such as will likely ruin those with whom he associates. Certainly the State should have the right to lay its hand on the criminal who has proven himself to be dangerous to it. To most successfully accomplish these things the indeterminate sentence, in fact as well as in name, I conceive to be a necessity.

The courts of the land should after giving to an accused man all reasonable safeguards in the investigation of the charge of crime against him, determine his guilt and then sentence him to imprisonment, without limit as to time, then leave it to another tribunal to determine when he has been sufficiently punished, when he has served long enough to impress on others the seriousness of the offense and operate to deter others, when it will probably be safe to society to release him, to keep in custody indefinitely such as by their conduct have forfeited all right to associate with their fellows and such others as do not give satisfactory evidence of repentance and reformation. The keeping of a man in custody for life is not necessarily punishment, it is the state protecting itself from the evil influence of a man who has proven himself a menace to it and in whom there is no such hope as would justify his release among his fellows. This is no severer or more drastic remedy than society uses for its protection in other ways. The State walks into the homes of its citizens and deprives them of their liberty for the protection of its people against physical disease; why should it not do so for the protection of its people and especially its youth against moral disease? The yellow card on your door means that you can not come out, that others can not go in, for a week, for a month or for a longer time because disease lurks within that makes it dangerous for you to mingle with them and until you have recovered from its ravages and purged yourself of its filth and contaminating debris you are imprisoned. You may be sent to the pest house and imprisoned with others who are physically

vile like you; you may be isolated for life and compelled to forsake home and family and to die among those who are suffering as you from incurable physical or mental disease. Society may shudder at this drastic means employed to protect its physical well being, but society upholds it and has through all the history of man. "Unclean, unclean," has been heard since the days of Moses. In these days serious consideration is being given by medical men and legislative bodies to the proposition to increase the number of diseases whose victims should be isolated from their fellows. Is there reason in the use of these means to protect the physical well being and then allowing the moral leper to roam at large contaminating the youth of the state and weakening its moral fiber? Are we justified in the use of such drastic measures to protect our people against physical and mental delinquents which can only destroy the body, yet turn loose among them those who are so vile and filthy morally as that they will spread disease which will destroy both soul and body? I believe in the absolutely indeterminate sentence, and the parole system cannot be administered for the highest good until it shall be the law. There are men in the prisons of this State who have only moral whooping cough, others the measles, scarlet fever, diphtheria, tuberculosis, leprosy, and neither patient nor society will be benefited by paroling out the moral leper. Those suffering from the minor troubles should as soon as they have given evidence of recovery and suffered sufficient punishment to impress them with the seriousness of their offense and such as would tend to deter others from like offenses, be allowed their liberty under safeguards which will as best we can guard against relapses. While such as do not should, as in the case of physical and mental derangement, be kept in charge of the State and isolated from their fellows.

Crime if not on the increase, is certainly not on the decrease. It is not my purpose to discuss the cause of it, but I conceive it the duty of a board or other tribunal charged with the responsibility of determining when the man convicted of crime should be turned loose on society to as nearly as it is possible for man to do it, select the men who can be saved to good lives and do all in the power of the State to save them, giving in many cases

the benefit of the doubt to the youth and first offender and to give the old offender and the premeditated criminal and the man who has committed such an offense as that he has forfeited his right to mingle with his kind to understand that the State proposes to try to protect itself against them and their kind. Kindly, humanely, with always a desire to find some reason for clemency, let the law be certainly and speedily enforced and crime will diminish.

THE PRESIDENT: I am sure that Senator Berry has the thanks of every member of this Association for the very able paper he has read in your presence. In these latter days, we are coming to understand that there is much we have not known, and that there is much yet for us to learn, in the study of the criminal class. As prosecutor, and later when engaged in making legislation, I began to be thoroughly convinced that the average criminal is such because of environment and education, and not because of birth or an innate tendency, and we can yet do much in this State and have much yet to do. I confess, I was astounded when I first came into the State Senate, to find no manual training had been provided for the boys at what is commonly known as the "Reform School". There were there between four and five hundred boys, with a superabundance of animal spirit, with no manual training of any character save and except that which came from plowing the corn and chopping wood, and a few other lines of work. It has been ten years since we made the first appropriation for manual training in the Industrial School. In the State of New York they have a reformatory system at Elmira where there are about fifteen hundred incarcerated. Their statistics show that between seventy-five and eighty-five per cent of the inmates are discharged to be heard of no more. If we can place our reformatory on that basis, we can make as good or a better showing, because we do not have New York City or Brooklyn to deal with.

A few years ago I visited Mt. Vernon, and saw the old tomb where George Washington was interred until his remains were removed to the place where they now rest. At the corners of the old farm there stood four cherry trees, which I was advised

had been there from the time the vault was first built by Washington. At that time they were in a bad state of decay. The next day I was in the city of Washington and met a friend of mine employed in the House of Representatives, and he told me that there had been a storm out at Mt. Vernon, and a policeman presented him with a little gavel made from that cherry wood, and I have brought it here to-day and am using it. This is not from the cherry tree George cut down, but rather from the ones that he grew.

I believe this completes the program for the forenoon, and we will take an adjournment until 1:30 P. M.

THURSDAY AFTERNOON SESSION

1:30 O'CLOCK P. M.

THE PRESIDENT: The convention will please come to order. In the absence of the Vice-President, I will call Mr. James O. Crosby of Garnavillo to the chair, who I think is the present Dean of the bar.

MR. CROSBY: Gentlemen, the next order of business is the President's address, "The Judicial Recall", by Senator C. G. Saunders of Council Bluffs.

THE JUDICIAL RECALL

One hundred and thirty-six years have passed since the Liberty Bell, in brazen tones, proclaimed the birth of a new Nation and announced that, under God, there should exist in the new world a government wherein all men should be free—a government that was being created for the purpose of vouchsafing to all men, without regard to creed, faith, or station the blessings of liberty and freedom from oppression. At that time, North America was a wilderness, except that along the Atlantic coast and by a few great inland waters there was a narrow fringe of settlers who alternated between fear of the savage and dread of

the royal mandate, usually executed by a haughty governor re-enforced by the bayonets of a rude and cruel soldiery.

For many years, the work of building a new Nation was heavy and society was engrossed in the hard struggle for existence. The supreme, yea, the only issue was the construction of a government and to that end the best thought of the day was given. Every patriot contributed of his time and toil, and counted no day lost that had been spent in earnest, often heated, discussion of the fundamentals of free government. Crowding upon the heels of the early struggles, came the contentions over the existence of human slavery which culminated in four years of battle and civil commotion—years in which the very flower of the Nation's manhood went down in fratricidal strife over the so-called right of a human being to own a human chattel. Slavery perished amid the smoke of battle, but many years were required to work out the almost vital problems that came as a legacy of the Civil War. Just as the fires of passion were burning low, there came the brief but glorious struggle with Spain, in which the thought of the Nation was absorbed. Two or three years sufficed, however, practically to dispose of the problems growing out of our last war, and, with the questions involving the very being of the Nation settled, or worse—forgotten, men have addressed themselves to the task of reforming almost every institution known to the Anglo Saxon race, whether the same be good or evil; and change, in too many cases, has been by a misnomer styled "reform" when in fact it has been retrogression.

In the last fifty years, modern invention has subjugated the invisible forces of nature and created new and mighty means for the movement of commerce and the transmission of thought; strange and wonderful creations for the comfort of man have come into being, and the alchemy of the nineteenth century has brought into existence unbounded opportunities for the gaining of wealth. The increase of opportunity has brought to the masses the comforts of a higher civilization, until the luxuries of yesterday have become the necessities of to-day. The dirt floor of the pioneer has given way to the velvet carpet, and the daughters of the laborer now tread the waltz to the notes of a high class orchestra. Prosperity, however, has not brought con-

tentment and the masses of the people are convinced that they are not receiving their proper share of the twentieth century progress. Strange as it may seem, this discontent is as prevalent among the rich as the poor. The mad desire for wealth pervades all classes, and, as our Government is now relatively stable, the people are casting about for new means of securing enlarged or additional profits and earnings without added effort. The laborer is convinced that the merchant and the farmer are exacting too great a price for their commodities, the farmer is certain that both the laborer and the merchant are guilty of extortion, the merchant is satisfied that his margin of profit is small, and all are agreed that the great corporations are the cormorants of organized society. The absence of great overshadowing issues and immediate danger to the national life, under these circumstances, has caused all men to turn to the Government for relief. Human nature has remained about the same, and while the citizen with a hundred years or more of American blood in his veins may have improved along the line of self-control, the millions of immigrants, fresh from European tyranny and misrule, who have landed upon our shores in the last seventy-five years, render it doubtful whether we have advanced to the place where we can be certain that we are beyond the danger point of social convulsion and class hatred; and we find our Nation of ninety millions of people, the greatest and richest of earth, rent with jealousy and dissatisfaction, largely because no great, overshadowing national issue occupies the thought of the entire people.

This condition is the opportunity of the demagogue,—the plague and curse of all ages,—and never has the field been so well cultivated as at the present time. As the overshadowing issues have passed, the personal equation has magnified until party lines are nearly effaced and men rather than great principles are the issue. The existence of government presupposes opposition; the child chafes under the restraint of home and school, and the adult under the laws that regulate his conduct. All of the forces of discontent created from whatever source, are but storage batteries of power, that can be discharged with fearful effect by him who would release them to serve his own pur-

poses in State and Nation. The forefathers created a republican, or a representative form of government, as it seemed to them that a pure democracy was impracticable. They were building for all time, as they believed, a government that should "promote the general welfare, and secure the blessings of Liberty to ourselves and our posterity". They had known oppression, they had fought for liberty, they had periled their lives, their property, their all, their sons had died on the battle field, they bore the scars of the field of honor, they were students of history, they were making secure the precious treasure won under the shadow of the gallows, at the mouth of the cannon, in the snows of Valley Forge, and they *ordained a representative form of government.*

In the last ten years it has become a nation-wide practice to attribute nearly all of the ills of individual and state to the laxness or wrong doing of men in official position and to claim that these derelict officials are the direct product of representative government and that the remedy is to bring the Nation closer and closer to a democratic form of government. The advocates of this so-called new system have found their camps to be veritable caves of Abdullam wherein are gathered all the elements of discontent. The citizen with a just complaint finds as his neighbor the unfortunate, the shiftless, the improvident, the spender, the miser, the one who desires law enforcement, and the anarchist who would destroy all society—each insisting that if the government were closer to the people the particular ills of which he complains would pass away and the millennium would be at hand. As success in gaining public favor has come to some who are demanding needed changes in the administration of public affairs, a veritable crusade has been inaugurated against our representative system by many who are more solicitous for their own political welfare than that of the Nation, and as success has made them bold, they have attacked one institution after another, until at last it is proposed to inaugurate a system by which all elected judges may be recalled whenever they shall have incurred public displeasure; a few have even gone so far as to demand that the recall shall extend to the Federal Judges and there can be no doubt that in the desire for new worlds to

conquer or in other words offices to be won, the assault will continue until even the Judges of the Supreme Court of the United States will be subject to a recall through the medium of a special election called for that purpose. The friends of the recall of judges disclaim any such purpose, but as soon as there is a possibility of success, some candidate for President will be before the American people with just such a demand. Not satisfied, however, with the recall of judges, some have even proposed to go to the extent of demanding the recall of certain classes of judicial decisions, and it will be but one step further until all judicial decisions shall be subject to recall at special or general elections.

The champions of the recall prefer three indictments against the courts, viz,—

1st. The courts are corrupt.

2nd. The courts fail to respond to the will of the majority.

3rd. The courts fail to improve methods of procedure.

The third indictment is hardly worthy of consideration, as the legislative branch of the government is clothed with plenary authority to change or regulate procedure, and in most States this power has been quite fully exercised. The average lawyer with legislative experience, however, knows that legislative bodies are slow to act in such matters, largely because the individual who undertakes to reform methods of procedure soon finds that he is outstripped in the race to public favor by the man with the "iron jaw" who deals in philippics against the "interests" and is so engrossed with that line of work that his time is not sufficient for the discharge of other duties, and moreover the demagogue rarely possesses those attributes of mind and training that fit him for the discharge of any duties other than those requiring a copious supply of invective.

It would ill become me, however, in a paper of this character to attribute any of the faults of the courts to a lack of proper legislation where the courts are clothed with power to act. Reforms in rules of procedure come slowly, for the law is a growth, and no change can be made without resulting inconvenience to the public, for a time at least. The courts, therefore, have been slow to act, and their powers in this particular have been closely circumscribed by constitution and legislation. Our own splendid

Code of Procedure is largely of legislative enactment and has been modified to a very limited extent in the last forty years. The methods of appellate procedure have been much simplified in that period and it is difficult to see how Iowa could hope to reduce very materially the cost of litigation of either *nisi prius* or appellate courts. One of the eminent Judges of our Supreme Court recently said in public discussion that no criminal case in a number of years had been reversed upon a mere technicality by our own Supreme Court. Such a condition is almost ideal. Not all courts have measured up to the standard of Iowa, but all are striving to better conditions, and the time is not far away when the Legislatures will afford the necessary relief.

In order to understand properly and discuss the other charges preferred by the enemies of the present system, it is necessary to consider what has gone before and the reasons why our present system was adopted as against other systems that were hoary with age when the Federal Convention met at Philadelphia.

Right here permit me to suggest that much that is now called "progressive" is in fact "antediluvian". Twenty-five hundred years before the time of Christ, the Babylonians and Assyrians wrote into the code of Hammurabi a provision for the recall of judges. Methinks that if Nebuchadnezzar could awake in Arizona he would believe he had indeed found the land of the "Standpatter",—the land where things go around in a circle which has a circumference of four thousand five hundred years. I congratulate Oregon and Arizona upon having completed the circle.

A democratic form of government is not a modern invention. Rome and Greece were democracies where the people by popular vote passed upon nearly all public questions. The citizens of Greece quarreled in the market places while Rome thundered at their gates,—and their government passed away. Rome, too, fell after years of contention between aristocracy and democracy, became a despotism and at last was the spoil of the Hun and the Goth. The free cities of Italy alternated between anarchy and tyranny. So fearful was Florence that her rulers would not "keep close to the people" that she held an election every three months. She also possessed a complication of councils and com-

mittees to interpret the popular will. Yet the product of all this democracy was the Medicis and the Hapsburgs.

The only new, fundamental principle of government evolved in two thousand years is that embraced in the term "representative". It is the true "progressive" of all civilization and it is taking the world. Strange as it may seem, our Congress and the State Legislatures embodying the representative principle are surpassed in age alone by the British Parliament. Every civilized nation on earth has adopted the principle save little Switzerland and she is perpetuated by the jealousies of her neighbors and the smallness of her area. The young Turks wrested a representative government from the Sultan at the cannon's mouth, Persia has her parliament, and the Chinese graduates of Harvard, Yale, and Oxford have driven the Manchu forever from their throne and have established in the Forbidden City a representative form of government. This form of government has conquered the world and there is no nation of any considerable size to-day that does not have its representative legislative body. In some the powers are somewhat restricted by monarchical prerogative, but even in Russia the demand of the people for this beneficent form of government was not to be denied and the Duma, with all its limitations, in the next fifty years bids fair to become a mighty force that shall make the Russian a free people. Representative government is the enemy of tyrants and the friend of the masses. Where it has been cast down or betrayed, the government has reverted to despotism and freedom has not long survived its downfall.

No system of government can be perfect, and perfection can only be expected when all men shall practice the teachings of the golden rule. "Government and the success of government in its last analysis depend upon the people themselves." People with great capacity for self-government will make a success of public administration under a bad form of government, and a corrupt people will fail under the best system that human intelligence has ever devised. Under the code of Moses, the Jewish people attained to the greatest height of prosperity, both temporal and spiritual, and then sank to the lowest depths of infamy and poverty. Human nature cannot be changed by law nor virtue

created by legislative fiat. The people in the end get just about the government they demand. Oberlin suppresses gambling and liquor selling with an iron hand, while New Orleans publishes a directory of its demi-mondaines. The difference between the two cities rests, not in the form of government, but in the disposition of the two peoples. The General Assembly of Iowa has never known a "jackpot" but that infamous institution is hoary with age in our sister State. The system of government is practically the same in both, the difference rests in the fact that one is plagued with a great city and the other is blessed with a great agricultural people who only know in a limited degree the vice of the city. It must not be assumed that all our ills are due to the form of our laws, and yet the effects of law, constitutions, and political institutions are far reaching and of great importance; but we must intelligently differentiate between what can and can not be secured by law. That law is most perfect which affords to each the greatest measure of opportunity consistent with his neighbor's rights. It is agreed of all men that our financial system can be so changed as to render impossible a money panic such as plagued us a few years since. The enactment of such a law would tend to safeguard our people from panic but it could not make them rich and prosperous. Their condition of wealth and prosperity would depend upon their own effort. Such a law would serve but little purpose, among a tribe of savages, but among our people it would avert wide spread disaster. The power of bad laws to bring on disaster is unlimited, while wise laws can but supplement the efforts of a frugal, industrious and law abiding people.

With these thoughts in view let us consider the beginnings of our own judicial system. Examine, if you will, the men who drafted our Constitution at Philadelphia. There was Washington, the President of the Federal Convention, who was fifty-five years of age, who had served as Commander-in-chief of the army without pay during all the years of the Revolutionary War. The average of all was about forty-three, the oldest was Franklin, who carried his eighty-one years with the dignity of a prince, and who was indeed a philosopher and student of government in the highest sense. He knew the great courts of Europe and he it was

who not only raised the means to pay the drafts drawn against him by the home government, but also all the others which had been drawn against our other representatives abroad. There was Roger Sherman, with his sixty-six years, and Mason and Wythe of Virginia each sixty-one; the New Jersey plan was formulated by William Patterson, forty-two years of age; the Virginia plan was proposed by Edmund Randolph aged thirty-four; Pinckney of South Carolina, whose plan was most potent in the Convention, was twenty-nine, and Madison, whose notes of the Convention are priceless in value, was thirty-six. Hamilton, the greatest student of government America has ever produced, was only thirty; the committee on style was headed by Gouverneur Morris at age thirty-five; and the Connecticut Compromise was the work largely of Ellsworth at the age of forty-two.

At Philadelphia there gathered the greatest lawyers, statesmen, soldiers, diplomats, and patriots the people possessed; there was but one rich man among them, Washington—and he was the greatest patriot of all, for both his life and property had been offered on behalf of his countrymen. When that Convention assembled there was presented to it the greatest opportunity to draft a constitution for a free people that the world ever has known or ever will know, for no like condition can exist again. No great city with its representatives of vice, corruption, and great wealth was there; no representatives of wealth were present to dictate policies or overawe with their display of power; the people of all the Colonies were dependent very largely upon agriculture and fisheries for a livelihood; the manufacturing interests were small; the banking interest was almost unknown; we were a people of toilers in a new country where men were free; many of our people were fresh from the tyranny of Europe and all from the despotism of royal governors. The Revolutionary War had been fought and won at the price of vicarious suffering. England, the freest nation in the world, had been their oppressor, and from her iron rule they had just escaped; there was nowhere any great *vis major* to work upon or distort their proceedings unless it was that of slavery, and it exercised no malign influence beyond its own protection. True it is, that the several Colonies were loath to surrender their powers, as

such, to the national government, but that was a question of distribution of power and not of advantage to the individual or class.

But there were added reasons. The Revolutionary War was the culmination of a struggle as old as Magna Charta. The pathway of history was lined with scaffolds upon which had perished those who had the temerity to believe and assert that kings do not rule by divine right; mankind in all ages had known the whip and scourge of the ruling power, feudalism still remained in several lands and had hardly attained to the dignity of a tradition among English speaking people; the assizes of Bloody Jeffreys were still a subject of discussion about the fire places, and the screams of the martyrs were still heard as their souls ascended to God. Is it any wonder that from such a body and such a time there sprang forth what Gladstone has been pleased to call "the greatest political instrument ever struck off on a single occasion by the minds of men". The Mayflower brought to the new world the most precious cargo ever known to mankind, for within her wooden walls were contained those vital principles that have touched and moulded the lives of the millions of America; but without the Federal Convention to write into one great document or chart, the great vital truths of Plymouth Rock, the Mayflower might as well have perished in mid-ocean. Freed from most embarrassments that limit, harass, and swerve from the path of duty, the delegates were free to crystalize into words those elements that had been refined in the fires of the centuries.

It must not be inferred that this Convention was not confronted with great problems, but they grew out of the relations of the Colonies as between themselves and not out of differences between classes. All agreed that the new government should be organized with three great coördinate branches, the executive, legislative, and judicial, each supreme in its department, with only such checks as were deemed necessary to preserve the integrity of those who might be chosen to fill the several offices and provide the proper checks and counterchecks among them.

The origin of our judicial system is a subject of great interest and worthy of consideration by every student of government.

The thirteen Colonies were English; their rulers and people were nearly all English or of English descent; their laws and traditions were English; their lawyers and public men were learned in the English system of jurisprudence, and, what was even more controlling, England was the only nation, then in being, which possessed a representative form of government. We thus see how natural it was that the Colonies should closely model their laws and institutions after those of the mother country.

The English system was far from perfect, and the founders of this republic naturally desired to eliminate its imperfections and to garner for the people of America all of the advantages enjoyed because of their relative isolation and freedom from aristocracy.

The early English judges were the creatures of the king and were swift to execute his royal will even though the subject should be unjustly executed or shorn of his estate. The primary requirement was that they should be servile courtiers of the king, his pliant tools, ever ready to uplift by judicial decision the favorites of the sovereign and as swift to strike down the one who was *persona non grata* at court. The outrages perpetrated by these unworthy judges were so flagrant that the people of England demanded from the king the right to be tried by a jury drawn from the body of the county, and by this means they sought to make secure their lives and property. Their judges did not take kindly to this innovation and forced the juries to deliberate without fire, food, or water, but the jury system remained, and time and public sentiment soon brought the English courts to a place where judges were appointed because they were learned in the law and possessed of the highest character. The first two Stuarts sought to use the courts for the purpose of punishing their enemies and to prevent the exercise of political rights that now are not even seriously questioned. The tyranny of the courts was one of the chief causes of the great rebellion, and out of it, when James came to the throne, came the writ of habeas corpus, the greatest measure for the protection of personal liberty ever enacted by a legislative body. Charles II and James had learned but little concerning judges and still insisted that they should be the tools of the king. Bloody Jeffreys

was a product of that condition, and his name is execrated wherever the English tongue is spoken. The lawyers of England almost to a man despised this untoward condition of the courts and rejoiced when William of Orange with his consort sat upon the throne. When the lawyers went to pay homage, they were headed by Sargeant Maynard, then ninety years of age; "Mr. Sargeant," said the Prince, "you must have survived all the lawyers of your standing"; the old lawyer retorted, "Yes, sire, and but for your highness, I should have survived the laws, too."

The famous bill of rights contained no provision in reference to the courts, and William announced that he would sign no measure that made the judges independent of the crown. However, as he mingled with the judges and lawyers of England, his views changed, and while he indicated that he would veto a separate act yet he said, he would accept the independence of the judiciary if included in the act of settlement which was to fix the succession to the British throne. In that act of settlement was contained the provision that the judges should hold office during good behavior, and thus it has remained to this good hour; and who shall say or who will say that the courts of England have not been her crowning glory. While here and there a judge has been recreant to his trust, no man can truthfully say that the courts of that nation have not dispensed justice alike to rich and poor. Be it remembered, however, that the judges who have made the administration of English courts the glory of the Anglo Saxon race, have had nothing to fear from king or subject save through removal by address alone. The English people are to be congratulated upon the fact that their judges are so independent that when the great Coke was asked by the king how he would decide a certain question answered, "Sire, like a judge."

The removal by address is in no sense a recall, as that term is commonly understood. The accused under this practice has the right to a trial before a committee of either house; several trials have been had, in some instances extending over weeks or months of time, but since the promulgation of the act of settlement, only one judge, Sir Jonah Barrington in 1806, over a hundred years ago, has been removed from office.

When the Federal Convention met in Philadelphia in 1787 a most deplorable state of public affairs existed. The States were refusing to pay the taxes necessary for the support of the General Government, the payment of the public debt and the pensions granted to soldiers of the Revolutionary War. The administration found itself embarrassed at every turn. The States were defiant. They were levying taxes and exactions upon the commerce of each other until the burden was unbearable; interior States were compelled to pay for the privilege of transporting their own commerce to the sea board.

Von Holst in his great work thus describes the condition of the States at that time:

It was due to Washington alone that the whole army did not refuse to lay down their arms and dissolve, until justice was done them. The distress grew greater every year, and threatened daily to induce more serious complications. The foreign debt was maturing, and congress was unable to meet the interest upon it, to say nothing of the payment of the principal. All efforts to prevail on the States to guarantee the general government a secure and adequate source of income were without effect. The evidences of indebtedness of the home loan sank in consequence to about one-tenth of their nominal value.

The pecuniary condition of the individual States was still worse, for here there was not only no possibility of payment, but the disposition to pay became weaker every day. And even when existing legislatures could be reproached with nothing on this score, it was so uncertain what might be expected from future ones, that the state scrip could only be negotiated at an oppressive premium. And this became continually worse, for the number of those who aimed at liquidating their debts by a dishonorable exercise of the legislative power constantly increased, and in many of the States, it became more uncertain every day whether they could not find a majority in the legislature.

The same writer continues,

Public confidence was shaken to such an extent in consequence that even private individuals of undoubted credit were obliged to pay discount of from thirty to fifty per cent on their notes. Business was completely prostrated. There was no market for real estate, and sales for cash could be made, when made at all, only at great sacrifice. A sullen resignation began to take possession of the public mind. People despaired of bringing about a better state of things through economy and labor. Wild fancies in the garb of radical reform theories, tending to the overthrow of all law and

order, gradually usurped the place of the sober business habits, which at all other periods have distinguished the American people.

Again he says,

The United States had of course the right to enter into commercial relations with such of the European powers as might offer them the best terms; but was destined to remain completely unproductive of profit as long as these powers did not consider it their interest to enter into commercial treaties with them. England had already experienced how little reliance was to be placed on the promises of Congress. . . .

The United States, which had already dreamed themselves to be the redeemers of the world, were, both at home and abroad, an object of compassion, of scorn and contempt.

Washington wrote to Colonel Lee,—

To be more exposed in the eyes of the world and more contemptible than we already are is hardly possible.

Again he wrote to Colonel Knox,—

There are combustibles in every State to which a spark might set fire.

Shays' Rebellion had broken out in Massachusetts, the home of Concord and Bunker Hill, and threatened the direst consequences. Listen to the words of a plain farmer before the convention of that State,—

There was a black cloud that arose in the East last winter and spread over the West—It brought on a state of anarchy that led to tyranny. People that used to live peaceably and were before good neighbors got distracted and took up arms against the government. . . . I am going to show you Mr. President, and my brother farmers, what were the effects of anarchy, that you may see why I wish for good government. People, I say took up arms, and then if you went to speak to them, you had the musket of death presented to your breast. They would rob you of your property, threaten to burn your house, oblige you to be on your guard night and day, . . . Some were taken captive, children taken out of their schools and carried away.

I have thus quoted at length to show that patriotism, valor and good intentions are not sufficient to insure peace and tranquility among a people. The forefathers when they met in that memorable Convention realized that a *stable government* was prerequisite to domestic felicity in State and Nation. When they were drafting the Constitution they had the possible evils immediately before them, while we have not, save as a tale that

is told. In the discussion of this great question some of our people are as one who beholds the spots on the sun and ignores the dazzling glory of the orb of day. The few evils of our courts are magnified a thousand fold by designing men, and the general public is in danger because it may, forgetful of the past, deprive itself of the great judicial system that the forefathers gave us as the best solution of one of their greatest problems.

There was no disagreement among them or difference of opinion regarding the means of creating judges or their tenure of office. Bitter as were their debates, fundamental as were their differences, they all agreed that judges should be appointed to serve during good behavior, and that their salaries should not be diminished during their terms of office.

The Convention met on the 14th day of May, 1787, but so few were the delegates present that seven States were not convened until May 25th. It was occupied with organization until the twenty-ninth, when Edmund Randolph opened the real business of the session by an extended speech in which he outlined the new Constitution as Virginia desired it to be, and presented a series of resolutions among which was one referring to the judiciary,

Resolved, that a national judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature; to hold their offices during good behavior and to receive, punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

We here see that the purpose was to create a bench that should be as the English lawyers had demanded of William of Orange, independent of both rulers and people so long as the incumbents conducted themselves with becoming propriety.

Charles Pinckney of South Carolina also submitted a draft of a proposed Constitution; of the judiciary it proposed,

The judges of the courts shall hold their offices during good behavior; and receive a compensation which shall not be increased or diminished during their continuance in office.

It may possibly be suggested that the fathers did not appre-

ciate the fact that they were removing the judges from the people, but listen to Gerry of Delaware in that Convention ;

The evils we experience flow from excess of democracy. The people do not want virtue but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience, that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men, and which no one on the spot can refute.

Mason of Virginia said in the same debate, "I admit we have been too democratic."

On Monday, June 2, the judicial clause came on for discussion. Wilson, Rutledge, Franklin, and Madison participated in the debate. They differed as to whether the judges should be appointed by the National Legislature or the Chief Executive, but they all agreed as to their tenure of office and fixed compensation and the Convention was unanimously of the same opinion. There was no suggestion even offered that the judiciary be made elective. About this time it was proposed in the Convention that the judiciary should be associated with the National Executive in a council of revision, but this idea soon passed, as all saw that it was best to make the judges a body that should construe laws, not create them. On the 13th of June, Mr. Madison in the committee of the whole objected to the appointment of the judges by the whole Legislature as many of them were incompetent judges of the requisite qualifications. He proposed that the appointment should be made by the Senate ; which, as a less numerous and more select body, would be more competent judges and which was sufficiently numerous to justify such confidence in them. The committee of the whole unanimously agreed to the proposition of Madison and so reported to the Convention.

On the 15th of June, Patterson of New Jersey presented a plan which he said several deputations desired to be substituted for that of Randolph. It made no changes in the manner of appointment of judges, tenure, or change of salary except that it provided for appointment by the Chief Executive and the following,

That none of the judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for ——— years thereafter.

Thus we see the studied effort of the Convention to create an independent judiciary.

On the 18th day of June, Hamilton first entered the discussion to any great length and presented a sketch of his plan; in section VII we read,

The supreme judicial authority to be vested in judges, to hold their offices during good behavior with adequate and permanent salaries.

The judiciary seems to have not been again considered until July 18th at which time there was a general debate in which a number of the deputies participated. The contention was whether the judges should be appointed by the Executive or by the Senate, and the whole matter was finally adjusted by placing the appointment in the Executive but subject to confirmation by the Senate. All were still of the opinion that the judges should hold during good behavior. The debates on this day are very interesting and they show that the central purpose of all the delegates was to place the judges as far as possible beyond the reach of influence of any kind or character and especially from popular waves of prejudice. On this day it was proposed to strike out the words "or increase", in that clause that provided against either the increase or diminution of salary during the term of office. Mr. Madison said,

The dependence will be less if the *increase alone* should be permitted; but it will be improper even so far as to *permit a dependence*. Whenever an increase is wished by the judges, or may be agitated in the Legislature, an undue complaisance in the former, may be felt toward the latter. If at such a crisis there should be in the courts suits to which leading members of the Legislature may be parties, the judges will be in a situation which ought not to be suffered if it can be prevented.

It may perhaps be pertinent to ask here what Madison would have thought of a vote upon a recall petition in twenty days after filing as required by the Constitution of Arizona which President Taft vetoed. At this time I shall be pardoned for suggesting that the method of appointment through the Executive, by and with the consent of the Senate, was borrowed from Massachusetts, where it had been in vogue for one hundred twenty years. Evidently the fathers were not sailing unknown seas. At the close of this day's discussion, the words "or increase" were stricken out.

On the 21st day of July, the discussion was resumed on the motion of Mr. Wilson providing that the Supreme National Judiciary should be associated with the Executive in the revisionary power. This discussion is of great interest for it shows without doubt that the Convention contemplated that the Supreme Court would pass on the constitutionality of laws enacted by Congress. In this debate Morris said,

I concur in thinking the public liberty in greater danger from legislative usurpations, than from any other source. It has been said that the legislature ought to be relied on as the proper guardians of liberty. The answer is short and conclusive. Either bad laws will be pushed or not. On the latter supposition no check will be wanted. On the former, a strong check will be necessary. Emissions of paper money largesses to the people, a remission of debts and similar measures will at times be popular, and will be pushed for that reason.

One after reading that last sentence feels almost like exclaiming, "Morris, thou wert a seer." The motion of Mr. Wilson was lost by a decisive vote, to reappear no more.

On August 27th Dickinson of Delaware moved to insert after the words "good behavior" the words

Provided that they may be removed by the Executive on application by the Senate and House of Representatives.

Morris urged that it was contradictory to provide that the judges should hold during good behavior and yet be removable without trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority. Mr. Randolph opposed the motion as weakening too much the independence of the judges. Those for the motion urged that the legislative branch would not exercise the authority arbitrarily. So anxious, however, were the delegates to preserve the independence of the judges that all voted "no" save Connecticut alone. Thus ended the discussion as to the judiciary features of the Constitution so far as the same relates to the creation of judges, their tenure of office and their independence. These debates and proceedings demonstrate beyond possibility of controversy that it was the unanimous purpose of all the delegates sitting in that wonderful Convention to ordain a judiciary that should be independent so far as it is possible for fallible human minds to make it. I have thus re-

viewed at length the debates and proceedings of that great Convention that we may fully understand that the united purposes of all the delegates,—without a single exception,—was to create an independent judiciary that should administer justice to all without fear, favor or ill-will.

If it was the united opinion of all the fathers in that great Convention that this system should be established, certain it is that it should not be changed unless it has broken down, and the change, if made, should only come after the proposed measure has been fully discussed and shown to be of great merit.

Have the courts of the land failed to measure up to their great opportunities? There are to-day over five thousand judges in this Nation and how very few are false to their sacred trust. Complaint is made of the delays in court, but much of this is due to causes beyond the control of judges. Overcrowded dockets are many times due to the failure of the law-making body which creates courts and judges. For example, the Supreme Court of Iowa was recently averaging for each judge about one hundred written opinions per year, and these were unsatisfactory to both the court and bar. The judges then agreed that they would reduce the number to eighty each. This must result in the court falling at least one hundred twenty cases behind in each year, provided the number of appeals prosecuted does not decrease. The last General Assembly refused to increase the number of judges. It is easy to see where the responsibility must rest, and certainly it is not with the judges. The acquittal of a notorious criminal who has been tried at the bar of public opinion is frequently denounced as a miscarriage of justice by the unthinking, but the thoughtful citizen differentiates between *suspicion* and *evidence*. An honored ex-president of this Association was driven into a suicide's grave by a popular demand for victims. He was acquitted in the courts, vindicated of all men, but his great pure heart broke under the load of shame and disgrace. The President of these United States has found it necessary recently to pardon two men because of disreputable methods used to secure convictions. Here we see the other side of the picture. And in this connection permit me to suggest that the acquittal of a criminal usually comes from the hands of a jury, and not from the judge.

Complaint has often arisen because of the injunctive process. But how few are the instances where there has been any substantial abuse. A few years since, the commerce of a Nation was blocked by a mob in which there were very few real working men. A man who held no official commission from the American people was in control in one great city and no car could pass unless it bore the pass of this individual. A court of equity compelled him to unlock the chains and let the commerce of the millions move, and he complained. Strange would it be if no mistakes were made, but would those who complain strike down the power of the courts to protect life and property and to preserve law and order? The honest laborer is as much interested in the preservation of order as any citizen, yea more, for his family must be fed from day to day. The battles of labor in the future are to be won in the forum of reason and not on the field of Mars or amid the cries of the anarchist and the mob.

"But," urge the champions of the recall of judges, "the American courts declare laws unconstitutional and such power is given to no other court in the world." We answer that that power is the greatest glory of our courts. Minnesota is complaining bitterly because the United States Court of Appeals for the eighth circuit has held her rate laws unconstitutional and many of those people would recall those judges, but if Iowa should place a tax of twenty-five cents per ton on all Minnesota commerce that passed across Iowa, Minnesota would soon invoke the commerce clause of the Constitution for her protection, and when the tax was held unconstitutional, would cry "O righteous judge!"

Our forefathers hated bills of attainder and *ex post facto* laws, hence the constitutional provision. If such a law should be enacted, would any real American desire that clause to be of no effect? We have heard much recently of "placing the dollar above the man". The truth is the dollar and the man must be equally protected, for there can be no permanent peace where justice is denied to either. Constitutional guarantees are created for the purpose of protecting the weak from the strong, the individual from the mass, and of what value is a Constitution if there be no power to enforce its provisions. Those who denounce the power of the court to enforce constitutional guarantees, are

like that individual who burned the barn to rid the same of the rats, or the person who would tear the roof off the house because within are undesirable persons. The inhabitants of Finland would rejoice if, in that unhappy country, there were a court that possessed the power to enforce the guarantees given by Russia. The Catholics of France would have welcomed a constitution with a provision that "No person shall be deprived of his property without due process of law", and also a court clothed with power to enforce the measure. The Catholic Sisters of Portugal, despoiled of their property and driven into exile on twenty-four hours' notice would have offered *te deums* if there had been in that miserable country some means of protection to the property they had accumulated by centuries of toil. Every constitution contains within it provisions for amendment, and while the process may be slow, yet if the change is desirable, it usually comes as soon as the majority of the people demand it. And it is better thus. France has changed her laws again and again with kaleidoscopic rapidity, and she has seen the streets of her capital run red with blood—not once but many times. Germany and England are slow to change, and while both have progressed, no student of history and government would care to exchange the laws of either for those of France.

Of what avail is a constitution without some power to enforce it; and where shall that power be lodged other than in the courts; and moreover, shall the courts be criticised for exercising the power conferred by the constitution? A decision declaring a law unconstitutional is at once denounced as an invasion of the rights of the individual without regard to the form of the law or the language in which it is written. Prior to the year 1909, there was no provision in the Iowa Constitution whereby a valid enactment could provide for one to condemn for private use a ditch right of way across the premises of another. Some farmer with a wet farm might have denounced an Iowa court for declaring such a law unconstitutional, but the fault would have rested, not with the court, but with the Constitution. The people cured the defect in the fundamental law and remedial legislation immediately followed. Many of the so-called "flagrant cases" are the product of defective and unskilfully written laws

that can be remedied by proper statutory amendments couched in apt words, or by amendment of the Constitution.

We should never lose sight of the fact that the failure of the Federation was due to the fact that there was no Constitution under which the government could enforce its mandates; and that condition produced two results, first, comparative anarchy, and second, the Constitution, the latter following the first as certainly as day follows night, and the contrast was equally great. Now it is seriously proposed to return to those conditions that produced what Washington called "shame and disgrace" in order that we may be rid of this beneficent system under which we have grown to be the richest and greatest Nation on earth. One cannot believe that the American people have entirely lost their senses, and that they seriously intend to throw away what it cost our fathers so much in blood and treasure to build, and which has safeguarded us through the years and brought us to our proud position where we are at once the wonder and envy of the world.

While most of the advocates of the recall have disclaimed any purpose to apply the system to the Federal Courts, and especially to the Supreme Court of the land, it is the announced purpose to place the State Courts under the plan. In nearly all of the States the judges are elected for a limited term of years and consequently may be rejected at the end of any term. It would seem to the dispassionate observer that, if these gentlemen who champion the recall do not intend to apply their nostrum to the Federal Courts, they, in their anxiety to reform the courts presided over by elected judges, would seek so to change the system from the elected to the appointed judge as to secure the advantages of the courts they do not now attack. I fear the movement is largely political and created for the purpose of affording certain ambitious gentlemen an opportunity to pose before the public rather than to serve the public welfare.

In most communities, the judges are elected time after time, and the further the people have divorced the courts from politics the better the administration of public justice has been. In Iowa there is an unwritten law that judges shall not sit in political conventions or appear upon the platform in discussion of the

political issues of the day. What citizen of Iowa would change that custom; and yet, if this pernicious doctrine is to obtain, it will not be long before our courts will be engulfed in the whirlpool of politics and our judges forced to fight in self defense. I think I echo the feeling of the larger part of the bar when I express the sentiment that the average lawyer would welcome the day when judges shall be elected at a nonpartisan election where the selection may be made upon the basis of qualification alone, regardless of whether the candidates be Democrat or Republican. In some of our sister States the courts have been dragged in the mire of politics, and there we find the loudest champions of the recall of judges. In many instances this demand is found in the mouths of those who have sought to compel the courts to do their bidding. If there is any man in public service hated by the average demagogue it is the just, upright judge who is independent of all clamor, and who moves forward in discharge of his duty without regard to fear or favor.

Perhaps the severest criticism offered against the judges of our courts is that too frequently the "interests" exercise an untoward influence in securing the election or appointment of judges who favor those who made them. This charge, if true, is a fearful indictment and one worthy of the consideration of every thoughtful citizen. The courts are the bulwark of the land, and, if those who sit in judicial position are false to their trust, the citadel of the people has been destroyed. In the last ten years the friend of the "interests", real or supposed, has been consigned to political oblivion. It is hard to understand how, with the primary and the Australian ballot, as they exist in most States, the champions of great interests can possibly hope to secure political preferment. In Iowa, our Supreme Judges have been selected through the medium of political conventions, and yet there has been almost no complaint that our court has ever been under the influence of corporations or any other powerful interest. The Supreme Judges have been reelected for a number of terms with the exception of Judge Kinne, and his distinguished service would have been rewarded with a long career upon the bench which he adorned had it not been that he was not a member of the dominant political party. Iowa's judiciary has been clean, fearless and upright. It has commanded the confidence of the

people to a high degree, and I believe that I but reflect the sentiment of the bar when I declare that we can hope for very little improvement along the lines of integrity and fairness in our bench, as it has approximated to almost perfection along those lines. In some other States, happily very few in number, it must be conceded that the bench has not observed to the same extent the integrity that has characterized our own courts, but in such States the laxness of public morals has found its echo in every branch of the public service. When you raise the standards of citizenship in those States to that of Iowa, the courts will respond to the condition.

The Supreme Court of the land is regarded as the greatest court in the world. Its history is the equal of any institution known to man. It has had before it questions of greatest moment, questions that have provoked the bitterest discussion, and yet its decrees in recent years have been accepted by the masses of the people with respect and approval. True it is that amendments to the Constitution have sometimes followed its judgments, but that does not militate in the least against the court, for it sits to *construe*, and not to *make constitutions*. It is its duty to *enforce* not to *create*. The people made the Constitution, and they, in the exercise of their sovereign will, may alter or enlarge, but no court should ever add to it by writing therein one word or thought.

Many of the judges of this court in the first seventy-five years of the Nation's history were bitterly assailed, but no patriotic American would care to blot from the roll of those seventy-five years one name thereon written. The judges of that stormy period labored so well and builded so great that in the last fifty years the citizenship of the Nation has accepted its decree with little complaint or murmur. We as lawyers echo to-day the words of the crier who opens the court, "God save the United States and this Honorable Court."

The friends of the recall urge that very few judges will fall under its provisions and that therefore it can do little harm. How specious the statement, but how false in fact. The nominee for the bench is now elected at a general election where the burdens incident to a campaign are distributed among a number of candidates, but the judge who faces the recall must single

handed and alone and from his private purse assume the whole burden of defending himself in a campaign where he will be bitterly assailed. Moreover he must continue the discharge of his official duties while those who would destroy him are busy by night and day to encompass his defeat—a defeat which spells disgrace to himself and family to the second generation. What honorable man with a successful career at the bar would care to sit upon the bench with this sword of Damocles hanging suspended above him at all times. But say the friends of the recall, “Let him respect the will of the people.” Respect for the will of the people, would have sent Wendell Phillips to jail for disturbing the peace of Boston, because he had plead the cause of the bondman and had been pelted in the streets, for so doing. Respect for the will of the people caused Pilate, the judge, to crucify Jesus Christ and turn loose Barabbas the robber. Respect for the will of the people, caused a judge to hang John Brown for treason; but who now has any respect for either Pilate or that Virginia judge? Behold John Marshall sitting at the trial of Aaron Burr, whom he despised and whose act he loathed. The public had not forgotten that morning scene where Hamilton lay weltering in his blood, and it clamored for the conviction of Burr when he was charged with treason, but Marshall, the fearless, the upright, the independent judge, at the conclusion of the government’s evidence directed a verdict in favor of the defendant and laid down a principle of law that all lawyers approve. The will of the people is the verdict of the years, *not of the hour*, and the independent judge is the one who writes the decree that protects the poor and the helpless. In this Nation all must bow ultimately to the will of the people, but that will shall be fully, fairly, and calmly expressed, after full debate in a fair forum where reason is enthroned and when the passions of the hour are laid away. The people of these United States created the Constitution. It is theirs to amend, alter, or destroy. They are the final reservoir of all power and their mandate, lawfully expressed, is the law to which all must bow; but there can be no permanent peace where justice is not done to the lowest of God’s creatures. We are taught in Holy Writ that He is no respecter of persons; wealth, fame, position, and power are but trifles before His throne, and so they must be in

the American court when placed before an American judge. That judge can only do justice who is free from all extraneous power and influence arising from any source whatsoever. An independent judiciary alone can administer justice to all. They have neither purse nor sword and their mandates are to be enforced by the coördinate branches of government. It is the duty of the bar of America to drive from the temple of justice every improper influence and to protect its sacred precincts from the spoiler whether he be great or small. There is no greater service we can render our beloved country. As in the past, so in the future, the American people will entrust us to write their laws and preside over their courts. Worse than Benedict Arnold is any one of our number who shall betray this sacred trust. We have banished from the court the king and his influence; justice is no longer sold in the market, but there still remains to us the solemn duty of guarding the sacred precincts of the temple from the advances of insidious foes. Human selfishness will strive to enter the temple, but if we will but measure up to the standard of Washington, Hamilton, Jefferson, Madison, and the fathers who created an independent judiciary, the people will listen and preserve to our children's children the Constitution and the courts under which we and our forebears have lived and made secure the Ark of Liberty.

MR. CROSBY: The next order of business is not upon our program. A resolution was introduced several years ago for the repeal of the inheritance tax. Late at the last session it was voted to make it a special order of business immediately after the President's address this year.

THE PRESIDENT: I had overlooked that order of business until our distinguished friend and member called my attention to it. I will now recognize Mr. Crosby.

MR. CROSBY: I regard the matter of the inheritance tax law as one of great importance to the people of the State of Iowa. I have endeavored for some years to get the subject before this assemblage for discussion and have signally failed until the present time. I do not propose to make any long speech in presenting this matter, but it is a matter worthy of discussion by the members of this Association.

Our method of raising revenues before this tax law was passed was by the assessment of the property of the communities by the assessors and equalization by the equalization officers, and then to levy an assessment upon the property which should be sufficient to meet the expenses of the government economically administered. Then, there came in, by what influence I have wondered, this inheritance tax law. Sometimes there comes through a community a disease that becomes epidemic through the country, and this matter of the inheritance tax law seemed to run in the same way. Its origin came when Augustus Caesar sought to be emperor of Rome, and when he could get Lepidus out of the way and consign Mark Antony to the sympathies of Cleopatra, he left him in control of Rome. He consented to this for the purpose of giving him an imperial honor. It rested in abeyance at that time until England had trouble with her colonies, and to bring them into submission England adopted an inheritance tax law. So now we have it here.

This subject has never been discussed in this Association, though repeated efforts have been made to bring it up. Now, we have it a special order. I will read the last enthusiastic report made by the committee on this subject:

With reference to the resolution recommending the repeal of the collateral inheritance tax law, your committee is unanimously opposed to the resolution, although some of its members favor an amendment, all being of the opinion, however, that it is a proper matter for discussion, if the Association has time to consider it.

This report is presented by a member who draws six thousand dollars from the revenues of the State of Iowa. Is it any wonder it took three years to reach this sage conclusion? The next question is, before whom am I presenting this resolution? This is called the Iowa State Bar Association. I wish I had the means of knowing what percentage of this Association are drawing their support from the revenues of the State. Of course, by a feeling of interest in the subject, they would like to see the revenues well provided for, so that they may have ample funds for their support, with a prospective increase in their salaries. So far as that part of this assemblage is concerned, I do not expect to get much help and support for this resolution for the repeal of this inheritance tax law.

We have in the State of Iowa a great army of office holders drawing their salaries from the revenues of the State. They were there before the law was passed. Since that time there has been one grand, general movement for increase of salaries. Now, for instance, years ago, when I came to Iowa, we had a Supreme Court consisting of three judges and they had a salary of two thousand dollars a year, and since that time we have increased them to six judges, and each one received six thousand dollars a year. Now, I like all the judges. But I am opposed to the inheritance tax law, because it is unnecessary. At the time our State Capitol building was erected, it was done through a State tax. We had two mills for one year; the next year two and one-half, and the next year two mills again. The State levy was not increased for the building of our magnificent capitol. Secondly, I am opposed to it, because it is a separate system of taxation for State revenues, apart from and distinct from the system to which we have long been accustomed. The only fault found with the old system was in the selection of improper assessors, men who did not discharge their duties; but with competent assessors, we have all the means necessary to carry forward our administration.

I am opposed to it, again, because it puts additional burdens upon our courts and law officers. In our former system we settled with the County Treasurer. I never yet have heard of a man dealing with the State Treasurer, receiving from him even decent politeness in connection with this business. Again I am opposed to it because it prevents the citizen's right to dispose of all his property by will. The State confiscates five per cent. It is our natural right to dispose of our property by legacy and bequest. Because, again, it is unequal, this taxation by this inheritance law may be three times placed upon the same property in a year. Again, because, notwithstanding all the increase of salary, there is piled up in our State treasury more than a million dollars of idle money, as a bait to the next Legislature, with the expectation that they might get back there on double fees. It is wrong in principle. It is un-American.

Now, aside from those who are drawing from the State revenues and ask for raises, who can favor such a law? What reason

can you see for it? It would not be proper for me to say that those who are drawing from the State revenue should arise, and those who are not to rise. It reminds me of a protracted meeting, where the preacher asked all those who wanted to go to heaven to rise, and they all got up but one man. He asked those who wanted to go to the other place to rise, but this one man didn't get up. He talked to him personally and wanted to know of him why he didn't want to go to either place. The man replied that Iowa was good enough for him. I have been fifty-eight years a resident of Iowa and I take pride in its just laws. I feel that this tax is a great wrong; that it has been brought about by those who receive the revenues from the State of Iowa. It is entirely the self-seeker who in the Legislature passed this law.

I hope this matter may have a discussion among the members of this organization adequate to its importance.

THE PRESIDENT: What is the further pleasure of the house? Does the house desire to take any action on the matter?

The Chair desires to appoint a committee to draft suitable resolutions in reference to our entertainment while in the city, and such other resolutions as the committee thinks proper to submit to us here. This committee is not to supersede other committees, however. I will name: Hon. I. N. Flickinger, of Council Bluffs, Senator C. H. VanLaw, of Marshalltown, and Judge Lawrence DeGraff of Des Moines.

MR. CROSBY: It seems that the members of this organization are not very zealous to discuss this question to-day, and so I move you that it be continued until the next session, to be discussed immediately after the President's address.

JUSTICE LADD: I suggest we vote on this proposition and all office holders and prospective office holders be excluded from voting.

THE PRESIDENT: This is the only opportunity I have had in my life to declare a thing unconstitutional.

The motion was duly carried.

At this time, 4 o'clock P. M., an adjournment was taken until 7 o'clock P. M.

BANQUET PROCEEDINGS

(Montrose Hotel, Thursday Evening at Seven O'clock)

RESPONSES TO TOASTS

HON. C. G. SAUNDERS, *Toastmaster*: I have been practicing law for more than twenty years, and consequently I know how happy a lawyer feels when he has had a good meal, and I am loath to interfere with the flow of spirit and enjoyment that I know abounds in the hearts of all of you. But it is necessary that we should address ourselves at this time to the balance of the program. You have a feast before you. I am sure this evening will be one memorable in the life of nearly all, if not all of us.

I took one hour of your time this afternoon and consequently shall not take much of it to-night. I shall afford you an opportunity to hear those whose names appear upon the program. Possibly I may have a surprise for you before the evening is over.

The first number upon the program is vocal music, by the Imperial Male Quartet.

THE TOASTMASTER: A distinguished and loyal son of Iowa, a few years since in a speech that has become almost memorable, by reason of the quotation I am about to make, said: "In all that is good, Iowa affords the best". It is not only of male quartets we have the best, but also in law colleges as well. There is located down here on the Iowa River, at Iowa City, a splendid law school, and also another at the capital of the State, and we are fortunate to-night in having with us and upon this program a representative of each school. These law schools have measured up to the statement I repeated a moment since, and Iowa is proud of them both. We have Dean E. B. Evans here to-night, from the Drake Law School, and he is to respond to the sentiment "Back Numbers". But I am sure, from my acquaintance with the Dean, before he shall have concluded, you will be of the opinion, that though his subject is "Back Numbers", he is not a back number, by a long ways.

BACK NUMBERS

Mr. Toastmaster, and Members of the Iowa State Bar Association: The Toastmaster spoke only a few moments ago about a certain glow that he thought might be in our hearts after this repast. I may have the glow, but it is not in my heart. In fact, I feel after the experience of the last hour and a quarter a good deal like the little boy did in the Sunday School class just before Thanksgiving time, when the teacher had given the boys and girls an opportunity to tell what they were most thankful for. Susie said she was thankful because of her bright auburn hair; Johnny was thankful because he wasn't freckled, and Mary because of her black eyes, and William because he wasn't lop-eared. But when it came George's turn, he said: "Well, teacher, I really don't know just what I could be thankful for. I haven't auburn hair; it is red. I haven't black eyes; they are kind of pea green. I have got freckles all over my face; I am lop-eared; in fact, the Lord almost ruined me." This supper has almost ruined me.

I am going to talk a very few moments about those things which have been discarded; things that happened yesterday, that may now be found in the scrap heap. The subject to which I am to respond suggests those things, although I wish to call particular attention to things that are not found in the rubbish heap, or that have not been east off, but are held as near and dear in the hearts of the lawyers.

One could not listen to the masterful address of our President this afternoon, without contrasting the careful statesmanlike wisdom of the framers of our Constitution, in safeguarding our judiciary from the influence of rulers or people, with the forceful, ever-increasing demand for the recall of judges and judicial decisions we are hearing so much of now.

From and including the invocation that opened our deliberations this morning, down to the last word of the President's splendid paper, the breath of the recall was present. It was not forgotten by the brother who welcomed us to this beautiful city, and it was touched upon by the distinguished Senator who responded to the address of welcome.

Much as we lawyers may detest and despise this thing that

raises its shaggy head, threatening the judiciary of our country, much as we see in it a monster that will destroy our jurisprudence; however much we may look upon it as unthinkable and impossible, we are compelled to grapple with it. And I tell you that we will not be able to stop it by arguments however profound and convincing, nor by appeal, however eloquent, nor by any effort we may put forth which does not have in it an answer, forceful and efficient, to some of the just complaints against our jurisprudence.

Time will not permit a comparison of conditions at the time our jurisprudence was established, with conditions that now prevail. There were then no so-called "interests" seeking to control executive, legislative, and judicial action. Neither were there millions of citizens organized into labor unions, who were educating their people to believe in their complaint against the power of the "interests" as exercised and put forth, especially in judicial matters. There were no political organizations, and the fathers never thought there would be, to whom the judicial officer must become indebted for preferment. We have all these and multiplied questions and conditions that were not dreamed of when our judicial system was first established. It is a condition and not a theory that confronts us.

Our inquiry should be to ascertain the foundation or basis of the demand for the recall of judges, looking carefully to see if there may be anything in our jurisprudence to justify or support in any degree this growing popular demand. And then, looking further, to see if there is anything which we may do to overcome and set aside this thing which threatens us.

No lawyer at this table to-night, whose mind does not revert to some feature of our procedure that gives just cause for condemnation and complaint. The spectacle of taking three full months to empanel a jury of American citizens, is an indictment of our jurisprudence, furnishing not only an opportunity, but being almost an invitation, to attempts to unduly influence the jury. Without criticising the verdict, we all condemn the procedure that permits eight years to elapse between the findings of the grand jury and the verdict of the trial jury, as we had it in the Packers' Case in Chicago. The gum-shoe methods of interview-

ing, pleading with, and influencing delegates to our county conventions, which the candidates for the District Court in this State must resort to, between primary day and the convention, is a disgrace to our people. Our forefathers safeguarded the judiciary from the influence of rulers or people. We, their offspring, put our judiciary under the humiliating necessity of keeping in good standing with the dominant political party, as well as with the ward heeler and precinct boss.

These are some of the back numbers we Standpat lawyers cherish and hold to our hearts. It is my belief, founded upon information, and I therefore charge it to be true, that on the question of procedure and precedent, our Bar Association usually present a solid front of Standpatters from Standpatville, who fit very nicely and completely the definition I once heard, that a Standpatter was one who had stopped and couldn't get started. But the fellows we have to fear are the crowd of laymen, who feature the description of the Progressive, led by an ex-president, who may be described as one who has got started and can not stop.

Superintendent Max E. Witte, of the Hospital for the Insane at Clarinda, was one day showing some guests through that splendid institution, where we care for the wards of our State. It is said, on coming to a certain ward, he explained to his friends that in this ward there were two very unique characters. There was George, whose mania was writing curse words on the wall, furniture and windows; anywhere and everywhere, he was writing curse words, and becoming very obstreperous and unruly unless he was given his way in this respect, and that he was a very troublesome patient until he placed another patient in the ward, Henry by name, who was something of a religious fanatic, and who conceived it to be his bounden duty to erase the curse words as soon as George had written them. Then it was that Superintendent Witte at once furnished them a blackboard. They entered the ward and the guests were entertained by the spectacle of George writing and Henry erasing. After watching them for a few moments, Superintendent Witte said to George: "Well, George, how are you getting along?" "First rate," said George, "I am two damns and three hells ahead of the mopper."

There are more than two damns uttered to-day against our profession; there are more than three hells for our consignment. I suggest to you, my brethren, that there are no men more fitted to meet these complaints and to take the initial step to eradicate and take out of our system some of these numerous back numbers, than are the members of the bar. By environment and experience, we are better able than the other fellow to do it. I therefore suggest, as a step in that direction, even though a small one, you will sleep to-night with the report of the Committee on Law Reform for a pillow.

THE TOASTMASTER: For a quarter of a century or more the name of Healy has been known from one end of Iowa to the other among the legal profession. Three brothers, at Ft. Dodge, have been engaged in the practice of law; one of blessed and distinguished memory, has passed on. Another is down at Baltimore, engaged, as some of us believe, in the useless task of nominating a Democratic candidate for President. The third and youngest brother we have with us to-night to respond to the sentiment "Respect for Authority". I have the pleasure of introducing to you to-night, Robert Healy of Ft. Dodge, whose tongue has been gifted, as have many of those who have come from, or descended from the Emerald Isle.

BESPECT FOR AUTHORITY

Mr. Toastmaster: There is, we must admit, prevalent throughout the land to a greater or less degree, a spirit of defiance to judicial authority and to the final judgments of the judiciary. Legislation that is unpopular is frequently questioned as being the product of selfishness, rather than springing from a purpose to lessen or improve burdens. Isolated examples of judicial incompetency and influenced legislation are frequently capitalized by ambitious politicians, with the result that many of our fellow citizens are of the belief that judgments and legislation are articles of commerce.

We have proof at hand that it is popular to impugn the courts and to suspicion the Legislature. A few of the States have already made their judges cowards and their executive officers cravens. The recall of judges and the recall of judicial decisions

by popular vote is the first step in the disintegration of republican government, as we have known it.

The framers of the Federal Constitution were not impulsive men; they were masters in the science of government building; their labors were worthy of their ability. The most conspicuous hope of the Constitution was that the American citizen would exercise self-restraint. That hope has to a sublime measure been realized. It is in the Constitution of the Republic that we find paramount "Respect for Authority". The three divisions of government are coördinate, yet independent, each in its own sphere supreme.

Without respect for authority, order ceases, law ends, government dissolves. With it, society is safeguarded and the individual has the fullest degree of liberty. We have often heard that that government is best which governs least, but when the government speaks through any of its departments its final word, compliance therewith is the duty of every citizen. "Freedom of speech" has always been a phrase to conjure with. "Freedom of action" has been the shibboleth of many moral revolutions. Freedom of speech and freedom of action, when uncircumscribed, mean the absence of all liberty.

We all recognize that the official acts of our public servants are open to review and subject to inspection, but such review frequently is unfair and incites distrust, and it is this distrust that I deplore. It is our duty as lawyers, never to look with tolerant eye upon the wholesale impeachment of the judiciary or to behold without protest the universal indictments of our Legislatures. Protection is the first duty of government, submission is the first duty of the citizen; and when we find protection and submission unioned, then do we have the law enforced and its institutions respected.

For the past few years sensationalism has been the order of the day. Our libel laws are more academic than practical, and the institution of a libel suit usually provokes laughter and too frequently ends in a farce. This condition has produced a disrespect for the courts and has removed the safeguard that should protect the reputation and the character of the individual and the judicial officer.

Dissenting opinions, often times pleasant reading for the defeated litigant, seldom, if ever, are necessary, and always weaken the force and effect of the majority's judgment. I have never been able to appreciate the philosophy of a dissenting opinion, and I seriously doubt the wisdom of such announcements. They are futile as an endeavor to convince the court which is divided, but they do frequently convince the public that the majority of the court is in error. A rule of law that is announced by a divided court does not inspire the respect and confidence that a final judgment is entitled to receive; thus do the courts weaken their own power and dissipate to a marked degree, the moral influence that is the heritage of our courts.

There must be law; there must be rules of procedure, and these laws and rules must be enforced, and when they are respected, the enforcement is easy, their infractions are few. But let there develop a contempt for authority, a defiance for the law, then, indeed, shall the future be pregnant with its burdens.

For these conditions, as I see them, I have no remedy to suggest, save one, and that is, let the bar of the land ever be a unit for the maintenance of the power, the dignity, and above all, the independence of the courts.

THE TOASTMASTER: In introducing the next speaker, I think I am in a very happy position. I told you a few moments since that Iowa had two law schools of which she is proud. I am proud of both. I am sure that I am absolutely impartial, because I received a collegiate training, my degree in arts, at Drake University and my law degree at the State University of Iowa. When I heard Dean Evans speak to-night, I said: "That sounds good; old Drake is still to the front". And yet, as I look upon this program and see here that our distinguished President of the State University is next to address us, my heart swells with pride for "Old Gold". I love them both; I love the work they are doing. Iowa is proud of her great University; she is proud of her sons and daughters who have gone out under the banner of "Old Gold".

I have the great pleasure this evening of introducing to you President John G. Bowman, of the State University of Iowa,

who will respond to the sentiment "The Spirit of the College of Law".

THE SPIRIT OF THE COLLEGE OF LAW

Last fall a member of your Association said to me, "Why, I went through your law school, but I learned most of the law I know after I got out." For a moment it seemed that I had discovered another new trouble. Then I noticed that the hair of the plaintiff in this case was gray and this suggested the first evidence which I needed in reply.

First, if the plaintiff were to enter the College of Law at the University to-day he would find that three years are required for graduation instead of one as it was in his time.

Second, he would find that any one of the three years is more heavily filled with hard work than the single year which he knew in the school.

And, third, he would find that the function of the law school has shifted considerable ground in the past twenty-five years. Not only at the University, but in any good law school to-day, a knowledge of the facts of law is distinctly secondary to an understanding of the principles of law and the ability to apply these principles to new situations. This conception means, among other things, that a sharper scrutiny is set up by law schools against those unfit for the profession.

If my view now is right, not only is a knowledge of the origin, history, and nature of the law essential, but also a large measure of clear common sense is essential, which enables the student to adapt his knowledge to new and changing conditions. It is important that we understand one another in this matter at the outset and agree, if you will, that no one can teach common sense.

An old Scotchman, the president of Princeton years ago, said to his students, "If you wish a knowledge of the languages, of mathematics, philosophy, medicine, law, or theology, come to us and we can give it to you, but if you want common sense, God pity you, we can not help you." In other words, if a man can not prove his ability to think straight, the law is not his calling

and both the profession and the individual will be served best if he is kept out of it.

But now to return to the specific indictment that the College of Law did not or does not teach the body of law essential in the practice. The answer is that a law school at best can supply only a part of the body of law necessary in practice. It can supply only a part of the intellectual training which is necessary; and, more than this, it is not as well adapted to offer some instruction as is the law office itself.

The function of the law school is, then, to teach the principles of law from the scholarly and theoretical point of view. In this the law office is not in competition with the law school. It is the function of the law school to give thorough training in the power of analysis, to encourage legal research, and to stimulate minds to a familiarity with legal principles rather than to fill them with rules and exceptions and devices. In this also the law office is not in competition with the law school. Now I would not have you understand that in my judgment law should be taught by theorists or by scholars outside of the profession. Law should be taught by men whom you should be most uncomfortable to have on the other side of the case. But that is a question which I shall not now discuss.

What I wish most of all to emphasize is the thing which I consider the highest privilege and duty of the law school, and that is to fill literally the life of the student with a love for the professional obligation of the lawyer. The law must be to him a call to our highest citizenship, a means of service and a vision of service so sublime that it is held in the heart like prayer.

Your profession is accused at times of the worship of the Golden Calf. But your profession is also credited with a record of deeds the inspiration for which was caught out of the sky. Now, if I see straight, the first duty of the law school is to build on that inspiration. When a man like James Otis in the early history of Boston resigns his rich office as crown advocate to fight without fee for the cause of the people of Boston against the oppression of general warrants, none of us can get away from his influence. Lincoln is the everlasting example of the lawyer with a vision of the law. He once defended a man charged with

murder. There was high prejudice and much circumstantial evidence against the prisoner. Finally Lincoln summed up the case. "The evidence seems to indicate", he said, "that the man is guilty, but I am not sure." Then he looked the jury square in the face and asked, "Are you?" The man was acquitted and afterward was proved innocent. These are examples of what I have in mind.

Some time ago I was at a military camp, lying on the grass with two army officers. Suddenly the band stopped the air it was playing and struck up "The Star Spangled Banner". At the first measure the two officers sprang to their feet and with their hats off stood at attention facing the music. Now for you the band plays the "Star Spangled Banner" all the time and you must face the music; and the first duty of the law school is to get this music into the hearts of those who would enter the law.

(Again at this time several songs were sung by the Imperial Male Quartet of Cedar Rapids.)

THE TOASTMASTER: An old Jew and his wife had a favorite son, and they were very much concerned as to the occupation that the young man would follow when he came to manhood, and so, one day, they concluded they would try him out. They placed a Bible, a dollar, and a bottle of whiskey on the table in the front room and started the young man into the room and concluded they would watch through the crack in the door as to what he would do. They thought if he would take the Bible, it meant that he would become a Rabbi; if he would take the dollar, that meant he would go into the banking business; and if he would drink the liquor, he would be a wholesaler. They gazed with great interest through the door. The young man having gone into the room, looked around a little. He finally stuck the Bible under his arm, put the dollar in his pocket, and drank the whiskey. The old lady turned around and said: "Mine Got, Isaac, he vas going to be a politician!"

We have a politician here to-night, from a neighboring State, and I want you to understand that he was not always thus. He was once a member of our honored profession, and he assured me to-night, confidentially, that since the steam roller had gone

over him, he had concluded, that about the first of January next, he would repent of his sins and return to the fold, if the brethren in Missouri would take him in.

I want to say to Governor Hadley, that if he finds the door bolted and locked, if he will just come over to Iowa, we will give him a good, warm reception, and in order that he may have a foretaste of what that reception will be, I now take pleasure in introducing Governor Hadley of Missouri.

GOVERNOR HADLEY: *Mr. Toastmaster and Members of the Great Profession:* I am very grateful to you, indeed, Mr. Toastmaster, for your cordial welcome to the State of Iowa, and to you, gentlemen, for your cordial greeting. If after the first of next January I shall find it necessary to undergo an involuntary reform and return to the practice of the law, I assure you that your invitation is not unappreciated, even though I may find it necessary to resume the practice within the confines of my own State. It is a special pleasure, and I assure you, a privilege, in these trying times, particularly for a Republican office-holder, to reestablish diplomatic relations with the legal profession, and I look forward with the comforting assurance that there is some place for me to light.

It is also a particular pleasure to me to meet the members of the Iowa Bar. I have not enjoyed that pleasure before, and I am glad to take advantage of this opportunity to express to you our sincere appreciation for the large number of able and high-minded lawyers whom you have loaned us to help us carry on our legal work in the State of Missouri. You gave us one, who, from a political standpoint, we would have been entirely satisfied you should have kept at home, the present junior Senator from the State of Missouri. You have given us James and Frank Hagerman, who justly rank among the leading lawyers of Missouri. Then there was that man, an ornament to any bar or society, a man who won for himself a distinguished name in the courts of your State, and who as Solicitor General of the United States has established his name in the fore-rank of lawyers, my intimate friend and associate in many a hard-fought battle, Frederick W. Lehmann. Then, I had the personal association

with a son of your State, and a son of one of your leading lawyers, who was my assistant when I held the office of Attorney General, and whom I have appointed to more offices than any other person, Rush C. Lake, the son of Col. Jed Lake, of Independence, doubtless known to many of you here.

But we in Missouri, and particularly myself, Mr. Toastmaster, are indebted to the people of Iowa for more than the good lawyers you have sent us. I do not know whether you realize that you enjoy to-night, an experience probably none of you have enjoyed before, that of looking upon a Republican Governor from the State of Missouri. And you may not realize how much the State of Iowa is entitled to the credit or discredit of having brought about that result. Some of my Democratic friends were disposed to explain my election to the work of an all-wise, but unscrupulous Providence. Those who know better, attributed it to the large number of Republican voters who came from the State of Iowa. And I wish to say that the latch string still hangs on the outside, as the majority is still uncomfortably close, and we will gladly welcome you to the youngest State west of the Mississippi, although the oldest State so far as its legal organization is concerned. Because Missouri, although it was the first State to be admitted into the Union west of the Mississippi, is to-day the most undeveloped commonwealth between the Alleghanies and Rockies, as only one-half of its soil has even been touched by a plowshare.

I also esteem it a rare privilege to come to a State and meet the members of the bar, in which the bar and judges have given to the people a clean record in carrying on that important department of our State Government in such trying times as these. You are to be congratulated that in these muckraking attacks which have been going on recently against the judiciary, not one word of criticism, or adverse comment of the courts of this State has been heard, and your lawyers here have won for themselves a name as being Progressives, even if they are Standpatters, in the working out of these problems connected with the administration of our great system of jurisprudence.

I feel somewhat as though I should apologize for undertaking to speak at a bar banquet or to a meeting of lawyers, as it has

been four years since I have been, by circumstances over which I had no control, removed from the practice of this great profession. I was impressed, however, with the idea that perhaps our brothers of the bar took rather too lugubrious a view of the situation as to the general attitude of the public toward the courts. I am not disposed to underestimate the importance of public opinion as it affects the practice of our profession, and I am not disposed to underestimate the necessities of leadership in bringing about a correction of conditions which may be the cause of just complaint on the part of the public. We should not be too much disposed, in the language of the political platform, "to view with alarm" or get scared at questions which are to-day pressing upon the American people. I undertake to say, and no one will controvert the proposition, that in every period of American history the lawyers have been leaders of every movement for progress and human liberty. The lawyer also is the man at the suggestion of whose dishonesty all the world will laugh and in whose honor all the world will trust. This is true, notwithstanding the incident of the man who was wandering through the cemetery and saw an inscription: "Here lies a lawyer and an honest man", and asked how it happened two men were buried in the same grave. Yet, in every crisis in our history they have looked for the lawyers to lead the march of progress and advancement. Yet, it would seem that there does exist at the present a very general dissatisfaction, or at least, many expressions of dissatisfaction with the conduct of that great system of jurisprudence that has for its purpose the keeping in balance of society. Indeed, these criticisms do not come entirely from without, but often times from within. Take the case of President Taft, as to whose conservatism in regard to the courts there is no doubt, who has publicly stated time and again that the administration of justice, particularly in our criminal courts, has almost broken down of its own weight, and that it has ceased to accomplish the object for which it was established. With such an indictment as that, it is deserving of special attention on the part of all of us members of the bar, whether there do not exist conditions which must be corrected, or else leave them to ignorant minds for solution, which will necessarily fail in the accomplishment.

It was shown in the report of the American Bar Association, or the American Civic Association, I am not sure which, that of the cases sent to the appellate court in a period for the last ten years, forty-seven per cent of convictions in criminal cases were reversed, and sixty per cent of the reversals were upon questions of practice. If this statement is correct, it is, indeed, a severe indictment of the administration of our criminal laws. It bears a striking contrast to the conduct of that same department across the line in Canada.

We have heard in recent times of the recall of judges and judicial decisions. In dealing with that question, I entirely agree with the Dean of your law school at Des Moines. We cannot defeat the recall of judges by arguments as to its theoretical inadvisability; we must remove the cause of public complaint, or else give way to the popular demand for the removal by popular vote of those who are not considered to have properly administered the laws of the land. I think it would be highly inadvisable and injurious if we should substitute the judgment of unpopularity expressed by popular vote—a method open to the demagogue, and special interests, instead of one in which the accused official could have his day in court in an orderly procedure as provided by American and English law.

We must admit that our system of impeachment is practically no remedy at all, and we must adopt a simplification of the method of removal by orderly process and trial of the judges, or else be prepared to accept from the people something worse. I sometimes think we are possibly unduly alarmed. When I heard the recall of judicial decisions and judges getting their severe raps to-night, I wondered whether this was a place for a Roosevelt instructed delegate to undertake a discussion of it. But in that good fellowship which is characteristic of our profession, I know any view is received for what it is worth, and that it is contrary to the very principles of our profession that there should not be a frank and full discussion.

We have had the recall of judicial decisions ever since we have existed as a nation. The first amendment to the Federal Constitution, after the adoption of the first ten, was to recall a decision of the Supreme Court of the United States by construing

that instrument in a different manner than it had been construed by the great Chief Justice Marshall himself. Here in Iowa and Missouri, time and time and again, we have recalled by constitutional amendments decisions of the courts, if we were of the opinion those decisions were not for the purpose of accomplishing the largest measure of social and industrial justice.

We must recognize this fact, that here, under our system of government, when the courts pass upon the constitutionality of the laws, they are a part of the law making power of the State rather than a part of the judicial power of the State. That is the declaration of Justice Bradley of the Supreme Court of the United States, and when the judges of this country pass upon the constitutionality of the laws enacted by the representatives of the people, they exercise a power that is exercised by no other judges than ours. I undertake to say, your distinguished visitor from Canada would not be willing to say that any rights of life, liberty or property are less secure in his country than ours. I undertake to say they are no less secure, because in England when the Parliament enacts a law, it is not within the power of any court to say that shall not be the law of the land. I want to say that if the decision of the bank guaranty case of Oklahoma was followed by the State courts, there would be no complaint on the part of the masses, because it was there laid down in that decision that that was due process of law and the proper exercise of the police power of the State which was required by a preponderant majority or prevailing public morality at the time the law was enacted. Under that line of decisions, if adhered to, I undertake to say, we would hear no more discussion about placing the power of the citizen superior to the power of the courts. Take the case of the Workingmen's Compensation Law, a belated reform in this country, which has been resisted on the contention that it was not due process of law as that law was understood in the fourth year of the reign of James of England. What sort of an answer is it to make to a helpless widow, or a man with a mangled limb, that this is not due process of law as that term was understood in the fourth year of the reign of James I?

The message that I would bring to you to-night, if I may be

permitted, is, that we should make ourselves leaders of public opinion in the solving of every legal and judicial problem and free our profession from those things which are the subjects of criticism. In working out the great problems which I believe to-day the American people are turning their attention to, let it be the lawyers who blaze the pathway along safe and sane lines of progress and advancement.

THE TOASTMASTER: I told Governor Hadley I thought we would take him in, and I am more than ever convinced of that fact, after the splendid reception he has received from the bench and bar of Iowa.

We in Iowa have very few shrines at which we bow. I have regretted exceedingly that the early history of our State, which was great and heroic, has not been preserved as it should have been. There were giants in those early days, both in and out of the profession; and the early bench and bar in Iowa, in my judgment, ranks to-day with that of any other State in the Union, not in number, because we are much younger than some of the States and our population is not so large, but in quality.

When you look back over the years, there are many distinguished names in our profession in those early days. There is Judge Wright; Judge Dillon, the most eminent authority in America on the subject of Municipal Law. There is Justice Samuel F. Miller, who for many years adorned the bench as Justice of the Supreme Court of the United States. There is General Crocker, of sainted memory, who took up the work of law and pursued it until his country summoned him, and he went to the battle field, and though stricken with disease, continued his work as a soldier at the head of the great "Crocker Brigade", and craved that he might die upon the battle field, under the open sky, rather than in bed from a lingering disease.

When this program was prepared, it was my desire to find some one who could go back and tell us of the giants of those early days, and at once my mind reverted to Major John F. Lacey, and I wrote him and he promptly and cheerfully accepted, and I have more than the ordinary pleasure in introducing to you to-night Major John F. Lacey, who will enlighten us on "The Early Bench and Bar of Iowa".

THE EARLY BENCH AND BAR OF IOWA

Mr. Toastmaster, Gentlemen of the Iowa Bar Association, and our visiting guests:

The State of Iowa came into the Union in 1846, and while I do not plead guilty to being a very old man, I am older than the history of our State in its relations to the United States of America, as a member of one of the great sisterhood of States.

I came to the State in 1855, and as a boy and man practically my entire life has been spent in the State. I have learned to love her soil, her people, and even her climate, with the affection of a native. I came to the bar in the autumn of 1865, at a time when the old leaders were still in middle life.

When I was requested to speak to you upon the subject given me, I did not understand that it was to be at a banquet. I supposed it would be in the afternoon; but I am delighted to know that I am to speak to you after you had the pleasure of the delightful repast to which we sat down to-night. I am glad now to know that it is to a well fed and well satisfied audience that I am to speak. The human heart is very close to the stomach, or as King Dodo expressed it: "The cardiac pumping station is just north of the lunch counter".

Of course you cannot expect new things on as old a subject as "The Early Bench and Bar of Iowa", but it is comforting to me to know that there is no story so fresh as an old and forgotten one. Montesquieu, in the eighteenth century, relates that he heard the same new story told two hundred and fifty-five times in three weeks in the salons of Paris. So that it is impossible to say anything especially new about a subject so old. You are all familiar with the old story of Judge Wise and Lawyer Sharp. The lawyer told the court that there were sixteen reasons why a certain witness was not present: The first reason was that he was dead. Judge Wise promptly replied that he need not mind the other fifteen. That story originated in every bar in Iowa, and every lawyer here heard it when it occurred the first time, and it was something of a surprise to me when I found the same story told by Suetonius about the Emperor Claudius, and the Roman historian probably got it from the Greeks, who in turn got it

from the Egyptians, and somebody has asserted that perhaps they got it from Judge Crosby.

Now, if I tell you any ancient stories of the bench and bar, you must forgive me for you may not be sure that they were new even to our predecessors. History is the greatest of plagiarists and she is fond of repeating herself.

The old bar is substantially all gone to that God

Who, in the dark and silent grave,
When we have wandered all our ways,
Shuts up the story of our days.

No one but the old bar can write or speak adequately of that bar—but they are gone. Let us deal gently with their traditions.

When I returned from a service of four years in the Civil War in 1865 and hung out my newly gilded shingle in my home town the old bar and their practice had been literally as well as figuratively shot to pieces by the war. Many of the old lawyers had gone to the front in all capacities, and a new practice must be sought even by those who left busy offices in their journey to the front. Such men as Crocker, Belknap, the Rices, Wm. Smyth, Bartholomew, J. R. Reed, A. J. Baker, J. W. Rankin, S. R. Curtis, C. H. Mackey, Jed Lake, W. M. Stone, Frank M. Davis, J. A. Williamson, H. C. Caldwell, W. G. Thompson, John Mitchell, John Shane, N. M. Hubbard, H. H. Trimble, G. L. Godfrey, M. M. Trumbull, P. Gad Bryan, W. S. Dungan, S. L. Glasgow, G. W. Clark, J. S. Clark, J. B. Weaver, W. P. Hepburn, and a veritable host of patriotic lawyers had closed their offices and books and marched away to fight for the Constitution and the laws.

W. M. Stone, then a judge on the bench, entered upon his docket: "This court is adjourned until the war is over", and raised a company of infantry and afterwards a regiment, until he was "recalled" to civil life by his election as Governor of Iowa.

The old bar of 1838 to 1861 were in the full tide of a busy practice when the guns of Sumter called a halt upon the bloodless contests of the forum. In 1865 those of the old leaders who had not passed away were not yet very old men: Iowa was the home

of young people. A man of sixty in those days was a very old man. Let me give you a good illustration of the difference in those days in the case of Judge McFarland. He is one of the characters that has been handed down to us from the old bench and bar. "Old" McFarland was said to have done this and said that strange and outlandish thing. He was always "Old" Judge McFarland. Yet, you will be surprised to know that "Old" Judge McFarland went down to his grave at the advanced age of thirty-nine.

These old fathers of the profession were boys after all, just as the fathers of the Revolution were young men in 1776, whose venerated and venerable forms we love to recall, were most of them young men. In 1776, Washington was only forty-four, Jay thirty-nine, Marshall twenty-one, Hancock twenty-nine, Jefferson thirty-three, Warren thirty-five, Hamilton twenty-nine, and Lafayette nineteen; and so it was with the old leaders of the Iowa bar. They were not only young men as a rule, but very young men.

But youth is one of the things which we rapidly outgrow. These young leaders were in middle life and some of them in fact old in 1865. At the close of the Civil War I was compelled to meet them at once in the courts, and there is no training so good as that of trying cases against skilled, well read and able practitioners.

Seevers, Cutts, Loughridge, Woodin, Sampson, Winslow, Stone, S. G. Smith, Burton, Hendershott, Barcroft, Townsend, Summers, Crookham, Needham, and many others of that generation were in the autumn glow of their generous powers, and the trial of cases with them or against them was an intellectual occupation.

I speak of these men in particular, because they were thrown in the immediate circle in which my practice was carried on. All over the State similar groups of able men dominated and illuminated the practice of the law in their respective localities. And we had a high order of courts in those days.

For one thousand dollars a year we had upon the district bench such men as Seevers, Olney, Williams, Springer, Loughridge, Richman, Day, Pendleton and their compeers. I would

suggest to my friend Judge Crosby that it was not then necessary to rob the State in order to get enough money for the salaries of the judges. And for the same small salary a Supreme Bench composed of men who were then and still are looked upon as intellectual giants, such as Judge Wright, Isbell, Greene, Stockton, Woodward, and later on we had Cole, Beck, Baldwin, Lowe, Wright, and Dillon, at two thousand dollars a year.

The old bench was a poorly paid body of men and the poverty of their income was dignified by being placed under the limitations of the Constitution. The Constitution of 1857 increased the allowance of Supreme Judges to two thousand dollars, and of the District Judges to sixteen hundred dollars. And history and tradition alike record that under these modest salaries we had a bench that has not been surpassed at any later time in our history. Not only did we limit salaries under the organic law, but the Constitution provided that the districts should not be increased faster than one every four years.

These old judges quit practicing law when they went on the bench, but they continued the practice of economy. Perhaps it would not work in these days, but in the old times neither bench nor bar put so high a commercial value upon their services and were reconciled to receive much of their rewards in honors, something like the patriotism of the House of Commons, who so long paid their own heavy campaign expenses for the privilege of serving without pay.

Abraham Lincoln was a great leader of the pioneer bar of Illinois and was proud of the fact that he usually received as much as three thousand dollars a year income.

The great English barrister, Topping, refused a retainer of one thousand guineas, with the remark "that the customary fee was one guinea particular and five guineas retainer. To offer him more indicated a doubt that he would do his duty, or that something more than his duty was expected of him, and he must therefore decline."

When old General Pettus of Alabama was elected to the United States Senate he took in a young partner. The young man enquired of the general what rule they should adopt as to fees. The general replied: "that they should charge enough to keep

them out of the poor house but not enough to get them into the penitentiary”.

The old bar stood for the law; the new bar, for the law and the “profits”. I cannot help but believe that the old bar loved the profession for its own sake much more than the lawyers of to-day. When Baron Parke was called to participate in a social function he replied, that he could not tear himself away from “a beautiful demurrer”. General Phil Kearney duplicated this from a military standpoint, when on one occasion the colonel of a regiment reported for duty to him under orders. “Where shall I take my men?” said the Colonel. “Oh, anywhere”, said the General; “there is beautiful fighting anywhere along the whole line.”

No man was ever a good lawyer who did not love his profession. When Gainsborough, the artist, was being cross-examined about a picture, he referred several times to the “painter’s eye”. The barrister enquired of him what he meant by the “painter’s eye”. Gainsborough replied: “The painter’s eye to an artist is what the tongue is to a lawyer.”

The remark of Lord Coke was as applicable to the old bar as to the new, that “all knowledge, however apparently worthless, will surely at some time prove of value in a lawsuit”. It is this truth that has led the lawyers in all ages to diversify their studies.

Gambetta was destined by his father for the church, but he wanted to be an advocate. The church would not accept a maimed man to the priesthood, so Gambetta put out one of his eyes, preferring to keep an eye single upon the profession of his choice.

Lord Chancellor Lyndhurst was asked by some one what rule he applied in the appointment of judges, and he answered: “I try to get a gentleman for a judge and if he knows some law, so much the better.” The old judges, as a rule, filled both of the requirements of Lord Lyndhurst.

If I should attempt to discuss the old bench and bar by name, this paper would become a mere catalogue of names. Should I mention some in order to illustrate conditions, it will not be because there are not others as worthy, or more worthy to be named.

Judge Wright was like Palfrey, of whom Edward Everett

Hale said: "Palfrey made you believe that you were the best fellow in the world and that he was the next." I once heard a most delightful lecture by Judge George G. Wright on "The Early Bench and Bar of Iowa". He was one of the old bar and bench as well. We love to think of him as a great lawyer and a great jurist and do not even refer to his honored term in the Senate of the United States. The lecture I refer to I do not find to have ever been published. Some years ago after Judge Wright's death, I took up with his son, Thomas S. Wright, the matter of having it published and the manuscript could not be found.

Judge Wright fairly revelled in the humor of the territorial days and his unpublished report of the indictment in the case of United States of America against Judah Lemon, Jr., is an irreparable loss. I remember one of the early stories in the lecture, where he told of an old time Justice of the Peace in Van Buren County who called up for trial the criminal case of State of Iowa *versus* John Thompson, *alias* Smith, *alias* Jones. The justice said to the prosecuting attorney: "Shall we try the ladies first?" "What ladies?" said the prosecutor. "Why, Alice Smith and Alice Jones," replied the guileless Justice of the Peace.

It makes the imagination ache to attempt to bring these old men again upon the stage. They had no callouses on their minds like some of our latter day specialists. There was too much variety in their work for that. The Wise Men of old came from the East, but they went West. The old settlers were all like the pioneers that James Fenimore Cooper tells of, who wanted to go to heaven unless there was some place further west. In fact, many of Iowa's earliest lawyers did go to the farthest west:

Where rolls the Oregon,
And hears no sound save its own dashing.

They were forceful men in their day and generation. They put ginger into their work, which you will concede was very different from proceeding gingerly. Some of those men were good shots—they were men of mark—they took life easy.

The Russian priests delayed the adoption of the habit of smok-

ing for many years with the text of scripture that "It is that which cometh out of the mouth that defileth the man", but our old bar were generally smokers and believed with the Totem tales that the "smoke warmed their minds as the fire warmed their bodies". They lived in the cabins and the old fashioned houses of the early days. As Grady says, these old houses "whistled when the wind blew and wept when it rained".

Their clients were of the good old stock in early Iowa, of whom Hamlin Garland (himself an Iowa product) says: These farmers would "go home from town, put up the team, feed the calves, hang up the lantern, say their prayers, wind up the clock, and put out the cat and go to bed". They worked hard and then slept as tranquilly as if the angels were fanning them with their wings. Some of these men furnished examples to follow; others, as to what to avoid. I recall the coroner's verdict as to the sudden death of one of them: "Died of an overdose of gin, administered by his own hand".

But the prejudice against lawyers has always been recognized as the stock in trade of the agitator and revolutionist. Said Dick the Butcher to Jack Cade: "The first thing we do, let's kill all the lawyers." "That I mean to do", replied Cade. "Away, burn all the records of the realm; my mouth shall be the Parliament of England." But Jack Cade's proposed enlargement of the uses of his noisy mouth has had copyists down to the present day. History is always repeating itself. Who thinks less of Mansfield now because of the violent attacks of Junius? Jack Cade has gone into oblivion, but the law still exists and its enforcement and the protection of the rights of person and property continue to be the work of an honest and upright judiciary with the aid of a bar independent of all passion and prejudice.

Intelligence, industry, courage, and conscience have characterized the judiciary of the country from the days of the Revolution to the present time, and any exceptions to this rule have only emphasized the universality of the rule: lawyers at the risk of life and popularity have defended human rights in all ages.

Vagaries are often mistaken for ideas and mere emptiness for depth. It is the daily duty of courts to shatter and dispel all these illusions. When Santiago surrendered a Spanish gen-

eral said to General Wheeler: "Take our islands, take all we have of material things, but, oh, spare us our illusions!"

Macaulay says it is the nature of man to overrate the present evil and underrate present good. Perhaps lawyers are prone to exactly the opposite course, and hence the bar is always looked upon as the great conservative force to resist unnecessary and radical changes unless made under due form of law.

Books to them, as Mrs. Thrale calls them, are "old friends in leather jackets". Books, books, books, now are becoming the burden of the bar, and then come more books to explain the books that have gone before. What an amount of rubbish disappeared when the Saracens burned the books of the great Alexandrian Library! Many valuable works of the ancient days were destroyed, but mankind has been relieved of a vast mass of worthless literature that only cumbered the earth. What are we to do with the countless output of legal literature? Acres of shelving are needed merely for storage purposes, and key numbers are devised to make the great mass available for the searcher for precedents. This was one of the burdens that the old bench and bar were freed from.

Emory A. Storrs, of our sister State of Illinois, whose name could not be mentioned without pity and admiration, was one of the most brilliant and improvident of men. He lived up to the motto that "The world is his who enjoys it". He once said, by way of criticism of a shallow opponent, that "his front door opened into his back yard".

Storrs, on a journey to London, was introduced to Lord Coleridge, Chief Justice of England. When Lord Coleridge came to Chicago some years later, Storrs invited him to meet a number of the leading lawyers of the city at a dinner. A splendid spread was provided with an abundance of costly wines. When the hour of the banquet arrived there seemed to be some hitch in the proceedings. A deputy sheriff was in the dining room with an execution against Storrs. Some of the guests at once suspected the cause of the delay and a whispering consultation was held among them and one of their number sought out the officer and satisfied the execution.

The banquet proceeded and "all went merry as a marriage

bell". Conversation absolutely blew a gale. Lord Coleridge alone was ignorant of the cause of the delay, but Storrs knew that his guest would hear of it later, so he put on a bold front and when the hour for speaking arrived Storrs recounted the facts of the execution in the house and wound up the statement with the assertion that the world was moving and that "this was the first time in history that an execution had ever been levied on the Lord's Supper".

Judge J. R. Reed of Iowa, after twenty years of public life, said that all he had to show was "his tooth brush and his post office address".

Judge Caleb Baldwin was one of the great members of the early bar. He was as large as his colleague, George Atcheson, was small. Judge Charles Negus, one of the rough diamonds of the old bar, once gave a lecture on David and Goliath. He said that Goliath was a big man, just like Caleb Baldwin, and David was a little man, no bigger than little George Atcheson, and then he recounted how David "kerslewed Goliath".

Tom Reed was sensitive about his size. Some one asked him how much he weighed. He answered, "Two hundred pounds". "But how much more?" his inquirer asked. Reed answered with some asperity, "No gentleman weighs over two hundred pounds."

Judge Baldwin was somewhat sensitive upon the subject of his size and refused to be weighed. One day the wheels of progress brought a new set of hay scales to the town of Fairfield and a test was being made in the presence of an admiring crowd. The people were invited to get on the scales and Baldwin joined the crowd; then they all got off and immediately all got back except Judge Baldwin. The test was completed: "so many pounds with Baldwin, so many pounds without Baldwin", and so it was ascertained and recorded greatly to the Judge's disgust that his weight was four hundred and sixty-eight pounds.

James Grant of Davenport was one of the foremost lawyers of his day, and the greatest book buyer. He made a specialty of railway foreclosures, which has always been classed among the gainful occupations. Justice Samuel F. Miller, in one of his addresses to the law students at the State University, when

Judge Grant was present, nearly broke Grant's heart by saying to the class: "Do not imagine that a man is a great lawyer because he can foreclose a railroad mortgage." On another occasion Justice Miller said that "great lawyers always grow up in the smaller cities where the business is not large enough to permit them to specialize. That the lawyers who try every sort of a case become good lawyers in all branches of the profession, whilst the lawyer in the great cities usually takes up one class of business alone and becomes not a lawyer, but a specialist."

Dr. Charles F. Lummis criticised the greyhound in the same way when he said that "a greyhound is not a dog at all: he is merely a highly specialized machine for catching jack rabbits". A man cannot be at the head of a profession who is merely at the head of a specialty in it. It was said of one of the old bar: "He specializes, and his specialties are both vocal and muscular." Sir Joshua Reynolds used to say that "a man who is at the head of his profession is above it".

General Samuel R. Curtis is better known as the splendid soldier than as a lawyer, though he stood high in his profession. He was given to the use of high sounding words. When he got into politics, his enemies quoted from one of his speeches in which he said: "Porosity begets repulsion whilst gravitation attracts the universe". They nicknamed him "Old Porosity". But all jokes at his expense were barred after his feats at arms in the Civil War. Dr. Johnson said of Shakespeare that "while an author is living we may estimate his power by his worst performance, but after he is dead we rate them at his best."

Lowell says: "What a lucky dog Methusaleh was; no books and nothing to know and nine hundred years to learn it in." How lucky those old lawyers were who did not have to keep up with the daily and annual output from the mills of legal literature. Coke and Blackstone were the unexhausted and inexhaustible fountain heads of those thirsty legal souls.

Farmer boys came to town to get a new clevis or trace chain, and they would go for a few minutes to the court room and soon grew so interested in the legal battles going on that only the adjournment for the day would send them back again to the

farm. I remember my own experience when I spent a few hours listening to the final pleas of the lawyers on an appeal case involving the title to a cow bell and one hundred and fifty dollars costs. The winner marched off with his friends and witnesses, with the tread of a conqueror, ringing the bell at the head of the procession.

It was back in the old days that some poetic soul wrote the inspiring couplet:

The legal birds upon the branches sit,
And evermore they sing to-wit, to-wit.

There were long-winded speakers too, in those days. An Irishman in a jewelry store saw a clock with a label: "This clock runs 365 days without winding." "I wonder", he said, "how long it would run if it was wound up." On one occasion at Burlington a lawyer beat the long distance record of the most persistent United States Senator, including both Allen and Carter, by talking until his associate counsel could go by steamboat to Davenport and bring a writ of injunction to stop the proceedings.

Iowa has not in the State courts exercised the power of limiting the time used in speeches to juries. Silence is golden. The greatest oration ever prepared in a law case was that of Cicero against Verres. It is a gem that has been studied for nearly two thousand years, and yet that speech was never delivered at all; as the orator was driven to the alternative of withholding his speech or having the decision postponed. So he took a vote instead, and submitted his oration to posterity. His example is followed by innumerable speeches under "leave to print" in Congress.

Judge John A. L. Crookham, of Oskaloosa, was another rough diamond of the early bar. As a State Senator he introduced the amendment to the Iowa Constitution to strike out the word "white". Some of his illustrations were startling in their force and simplicity. On one occasion he was arguing that a certain proposition was plain. He said: "It is palpable as the bank of a river." What more clearly defined thing could he cite as an illustration?

The bar of the early days obtained admission upon an examination by a committee, and they enjoyed rare fun sometimes in these examinations. An applicant was asked the question: "What is meant by the benefit of clergy?" His answer, though not technically correct, had some merit. He replied: "Benefit of clergy is half fare on the railroads".

In the old days there were few will contests. A man who died owning a large farm worth only five dollars or ten dollars an acre was not suspected of insanity. Shakespeare speaks disparagingly of real estate as "dirty lands". Now that Iowa lands are worth one hundred dollars to two hundred dollars an acre it is remarkable how many of the prosperous land owners are charged with insanity by their heirs. Insanity is a peculiar invention anyway. When Thaw was acquitted on the ground of insanity, he at once became sane and disputed his lawyer's fee.

The old bar never enjoyed the blessings of a type-writer, never dictated to a stenographer, nor were they ever dictated to by one.

Some of the greatest of the old bar have been lost in the sea of politics. Such men as James F. Wilson, William B. Allison, John A. Kasson, and D. B. Henderson, would have arisen to wealth and eminence in their profession had they not preferred the distinction and meager emoluments of public life.

Horace Boies, now enjoying the blessings of retirement in a ripe old age, preferred the profession to political promotion and gave only a brief period of his life to public affairs.

Judge David Rorer was one of the fine lawyers of his day, but very small in size. Sydney Smith once said of Jeffrey, what might have been said of Rorer, that he was so small of stature that his intellect was improperly exposed. Rorer's legal writings have brought him fame and reputation.

Daniel F. Miller of Keokuk was one of the striking characters of the old bar. He was straight as a gun barrel, and was a perfect specimen of a gentleman of the old school. Perhaps the finest specimen of physical manhood in the old bar was Judge Edward Johnstone of Keokuk. He was good to know as well as to look upon.

It is related of one of the old Virginia bar, who always wore ruffled shirts and dressed in the height of the fashion of his day, that once on the circuit he attended church as he was accustomed

to do. He came in late and as he walked down the aisle the preacher paused in his sermon for a moment and said: "Here comes Judge ———, late to church. If he had not spent so much time primping he would have been here at the opening prayer. I will appear against him as a witness on the judgment day." The old lawyer retorted: "That is always the way: the greatest rogues turn state's evidence."

The jury system is the palladium of our liberties and the butt of the joker in the old days and the new. The proverbially obstinate eleven jurors existed then as now. On one occasion the jury came in for further instructions after forty-eight hours of deliberate deliberations. The chances of agreement seemed small but the court, to put them in a good humor, said he would have their dinners sent up to them. The foreman gave the court an insight to the condition of the jury room by suggesting that he should "have eleven dinners and one bale of hay sent up".

The old days were the times when the holding of large tracts of land was a great burden. Land was cheap and plenty and its ownership did not involve the jealousy of the present day.

General Trumbull tells us of his old and enthusiastic friend, Fogarty, who had a plan to improve the world by killing all the landlords. He said that the plan was a simple one: he proposed to give one hundred and sixty acres to each man who would kill a landlord. But Trumbull said, "Suppose he should kill ten landlords, he would then have sixteen hundred acres and be a landlord himself." "I have thought that out", said Fogarty, "and have arranged for another man to kill him."

It was a common thing to trade eighty acres of land for a horse or yoke of oxen, and titles were commonly looked on as good. Now the high prices have developed a remarkable degree of strictness on this subject. For pure technicality I commend the abstract of title men as the limit. One of them recently condemned an old title because when James K. Polk issued the patent his wife had failed to sign it.

Practically the whole of the old bar were what we commonly speak of as self-made men, and in addition to this the mere fact of emigration to the west included a principle of national selection that brought to the frontier the vigorous, the active and the brave.

Mr. Cleveland, in his autobiographical sketch, states with some

pride that when he got ready to practice law he went to the west—to Buffalo. But the Iowa lawyers went much further when they bravely crossed the Mississippi. Mabie says: "Ohio was settled by people who started to go west but lost their nerve and stopped in Ohio." But Iowa, in the old days without a railway, was the west, indeed. All honor to the pioneer bench and bar of Iowa!

THE TOASTMASTER: Last year an eminent gentleman in the United States, in company with a large number of others, opened up some negotiations with our neighbors across the way. We at that time expressed our good will and said we favored reciprocity, but our Canadian friends would not have it that way. I concluded on behalf of this Association, if we could not get them any other way, we would go over and draft them. I drafted one and brought him over to-night, and ask him to respond to a sentiment which I proposed. I say that in order that he may start fair with me. He is to respond to the subject, "American Courts as a Canadian Sees Them." I have the sincere pleasure of introducing to you at this time Mr. William Renwick Riddell, Justice of the King's Bench Division, High Court of Justice for Ontario, Toronto, Ontario.

AMERICAN COURTS AS A CANADIAN SEES THEM

MR. JUSTICE RIDDELL: *Mr. Chairman, Your Excellency, Your Honors and Gentlemen:* I desire to begin by saying how glad I am to be with you, and by congratulating you upon the success of this gathering, both in numbers and enthusiasm. I do not say "spirits"—that word might give rise to misapprehensions. I desire particularly to congratulate you upon the eloquence and ability of the speakers who have preceded me.

I am not wholly a stranger in your magnificent State. One very near and dear to me passed many useful years upon an Iowa farm, and your Iowa sod covers all that earth can claim of him. Even without that, I should not consider myself a stranger here, for are we not of the same stock? Do we not speak the same language? Have we not centuries of glorious history in common? In comparison with those centuries, is not that unhappy misunderstanding which separated you and me nationally, but a thing of yesterday? Nay, is not that separation itself but

skin deep in comparison with our essential and fundamental unity of race and genius and ideal?

I do not know how an Iowan feels when he puts his foot in Ontario or Canada in general. But I do know how a Canadian, at least an English speaking Canadian, feels when he puts his foot in this Republic and in this State; he feels that he is among very brethren.

I do not propose to speak to you about government—about your forms, notions, and rules of government. If I did that, I fear I should be conspicuous—as conspicuous as my friend, the Governor of Missouri, felt he would be if he spoke to you as a delegate instructed for Roosevelt. I am reminded of the little girl who said to her mother: “Mother, dear, do you think I will go to Heaven?” The mother replied: “Yes, dear, I think you will, if you are a good girl.” The girl said: “And mother, do you think you will go to Heaven?” The mother replied: “I hope so.” “Oh, mother,” said the girl, “I *do* hope so; I would feel so conspicuous going along the streets of Heaven and everybody saying, there goes the little girl whose mother is in Hell.” It feels uncomfortable to be conspicuous, even though you are in Heaven.

I am not going to speak to you about the courts of any particular State. I shall not speak of the courts of Iowa. With your judges and other lawyers I am making acquaintance for the first time. (Mark—I never say judges and lawyers; I say, judges and *other* lawyers—the distinction is substantial.) Your decisions, indeed, are brought before me from time to time for their persuasive effect. I am not going to speak of the judges of Missouri, where I have the pleasure of knowing a number of them; nor of the State of New York, nor any State which is sure Teddy or sure Taft, or Democratic. I shall speak of that State which everybody knows the name of, although it tries hard to remain unknown; and respecting its retiring modesty, I shall speak of it as the State of “Weiss-nicht-wo”, as our German friends say.

I have had occasion more than once to visit the courts of that State and have noted their procedure—or failure to proceed—and have been alternately filled with admiration and astonishment, given alternately material for instruction and amazement.

The courts of this country are not wholly unlike my own. It is true that the judges of this particular State of which I am speaking are not dressed in suit of solemn black; they have no gown of formal cut; they have no bands of lawn or snowy linen. If they wear a gown, nine chances out of ten, they spoil the effect by tying it with two strings across the chest or by putting a black tie above it. They are not addressed by the bar as "Your Lordship" or "My Lord". It is: "May it please the Court", or "Your Honor"; or sometimes, indeed, "Now, say." It reminds one of the American Bishop who had spent some years in England, and being a Bishop, he was greeted there as "My Lord" and "Your Lordship", till I fear he began to think he was of better clay than ordinary humanity. He came, however, to a sense of his true position when he got home and was met at the station by the hackman's "Hello Bish; got home, have you?"

I like to tell stories about Bishops. There are so few of them that there is very little fear of retaliation, and then it gives a theological and ecclesiastical flavor to one's discourse. It is for that reason—and not at all that it is apropos of anything I have to say this evening—that I should like to tell you the story of the Bishop of Ottawa who once went to a fishing camp. All went well till Sunday morning; when he got up he found nobody around but one man—and he had a sprained ankle. He asked for the rest of the men. He was told they had probably gone fishing. He said, "Why didn't they wait for me?" "Oh," the man replied, "Maybe they kind o' sort o' thought perhaps you wouldn't likely care to go fishing on Sunday." The Bishop said that reminded him of a circumstance, when he was an humble curate. A couple had come in from off the street for him to marry them. When he got so far in the service as to say: "Wilt thou, John, take this woman, Mary, to be thy wedded wife", the fellow broke in by saying, "What in h— are we here for?"

Then there are the barristers—I should of course say attorneys—my excuse is that attorneys do not appear in court in my country. The attorneys are not dressed in this state of "Weiss-nicht-wo" as at home. They may have pink or yellow boots; trousers and waistcoat of various colors, and a coat, "go as you please". There is no silk gown or stuff gown, no precedence except that given by superior ability or superior assurance.

The witness, instead of being obliged to stand, is seated; in a British court he is never allowed to sit down, unless on account of illness or physical weakness. It is wonderful what an advantage it is for a witness who is trying to evade awkward questions to be allowed to sit down, particularly if he has a chew of tobacco at the same time. But what amazed me most was the selecting of the jury. In thirty years' experience in Ontario I never heard a jurymen asked a question but once, and that was by a very young barrister. Once in an American court I heard counsel ask a jury if any were Canadians, there being an Englishman a party to the action. Counsel, I suppose, imagined that a Canadian would likely favor an Englishman, not knowing that a Canadian is no more an Englishman than an Iowan is a Yankee.

I have heard jurymen asked their religion, or whether they had any religion, their occupation, about their reading newspapers, opinions which they might have formed or not formed, with the minutest and most searching detail; and then perhaps at the very end the jurymen is put on the waiting list to see if by possibility he won't ultimately fill the bill.

The first time I had the pleasure of meeting your President—I mean the President of the United States—while I never talk politics, either at home or abroad, I may be here permitted to say, that 'President Taft is the ideal, to my mind, of the man, the gentleman, and the lawyer. Whether he has the astuteness which seems to be necessary in this favored land to manage a party is, of course, not for me to say; that, perhaps, will be determined later on. On the first occasion I met your President, I gave him an illustration of the difference between our courts and some other courts. I had gone up to London, Ontario, on the same day upon which, a little further along on the same line of rail, but across the border, they began to get a jury to try a murder case. I had tried four criminals and they were comfortably on the way to the penitentiary; and I had got through with seven civil cases and was home, before in that American city they had secured half the requisite number of jurymen. Indeed, it is not at all uncommon, I am given to understand, that it takes not thirty minutes, but sometimes two weeks (indeed, I have heard it takes sometimes two months) to find a jury. In thirty years' experi-

ence at the bar and on the bench which I have had, I never yet have seen it take thirty minutes to find a jury, even in a murder case.

Where a person is charged with a crime, in the State of which I have been speaking, all the old technicalities, rules of the old English common law, are in full force and effect. Those rules which are not the perfection of common reason, those rules which were often the invention of tender-hearted judges, who did not want to hang some miserable wretch just because he had stolen a loaf of bread to still the hunger cry of his famishing brood, those rules which were invented as an excuse for the tender-hearted judge, are in criminal cases invoked and applied every day in this State to which I have referred. Indeed, it would seem, in that particular State, that the prisoner has so many rights that nobody else has any at all, either State or individuals. All the technicalities which an ingenious and subtle mind can scare up are brought to bear, in order that there shall be not that quiet examination by the people into an offense which it is alleged has been committed against the majesty of the people which is the theory of a criminal trial. Woe to that prosecuting attorney who imagines that the words "against the peace of State", are the same as "against the peace of the State". That extraordinary ingenuity, that uncanny subtlety of the criminal lawyer—I do not mean the lawyer who is a criminal; I mean one who defends criminals—can only be arrived at by a life-long, microscopic study of documents, such as the Constitution of the United States, and of the States; this, as it seems to me at all events, is the only thing which can bring about this cunning, acuteness, and subtlety.

We are told that a very large per cent of the cases tried are set aside by reason of these very technicalities, which should have no more to do with the trial of a case than they would have with the relations between man and man in business. There is no more reason why a criminal trial should not proceed on common sense principles, than there is that a farmer should not cultivate his land on common sense principles. That, however, is what this State of "Weiss-nicht-wo" has not yet arrived at.

Then time is not the essence of a criminal trial in that State. It is all very well in monarchical countries, England or Canada,

where we are ground down under the iron heel of the despot, to finish a murder case in two days. I have known in all my experience only one murder case to last more than two days; and in all the cases I have tried, none has lasted over a day and a half. It is all very well in countries where they do not know better; but in this land, if that were the rule, what would the voluminous newspapers do to fill their columns? A ship does not sink every day; candidates for the presidency do not change their politics *every* fortnight, and the great metropolitan newspapers would find it a very cold day if they did not have something to say about a "Thaw".

But, when all is said and done, your courts are familiar and homelike, even in this State. The language is the same, the familiar rules of law and equity are the same and set out in the same language, and applied in the same way. The Latin is the same—I mean the pronunciation. I have said more than once, that when I hear Latin pronounced in a certain way I may be amongst scholars, but I am certainly not amongst common law lawyers. We have *habeas corpus*, *nisi prius*, *feri facias*, *venire facias*—mandamus indeed is corrupted into man-damn-us, which affords the lady lawyer some excuse for still further corrupting it into woman-condemn-us.

Then we have counsel trying to catch the wily witness, laying traps here and there, with straight questions and crooked questions, double questions and leading questions; and the wily witness evading, parrying, getting around the queries. We have counsel thundering that the world will come to an end and justice fly from earth if his unfortunate client does not get what he asks, or escapes what the other fellow asks that he shall get. He coaxes and persuades, he almost swears, and does shed tears, crocodile or otherwise. He brings to bear all the weight of eloquence and ingenuity to persuade the jury that his side is the right one. Citizens who until to-day were respectable, and respected, are, if anything, two or three shades worse than Judas Iscariot; while his man, confidence man or other description of rascal, shines by comparison with the Beloved Apostle. He brings the whole weight of his learning, reputation, character, and personality to bear upon the unfortunate judge. Sometimes

the judge is persuaded against his will. Sometimes counsel fares like the fellow who tried hypnotism on the butcher. He said, "I tried hypnotism on our butcher to-day." He was asked what luck he had. He answered, "Not much. I looked him straight in the eye and said, 'That-bill-is-paid'." "And what did he do?" "He looked me straight in the eye and said, 'You-are-a-darn-liar'." Sometimes the judge is persuaded, overborne, and convinced against his will, and sometimes, on the other hand, he says, "You are a blank liar."

It is perfectly marvelous to a Canadian, a Britisher, to see what splendid judges you get by a system so repugnant to our public sentiment. They generally are men of great learning, sterling character, and of no little personal dignity. The American judge is noted for his strong sense of justice and right. You have a right to be proud of your judges. Although his term may be near expiring, and although a decision may lose him a re-nomination, or if he succeed in being renominated, may lose him much support; the case is extremely rare that an American judge swerves from the straight path of duty. So, too, of your bar. Of course, there are black sheep in every flock, but I am well within the mark when I say that the black sheep in the American bar are not numerous, compared with other professions. I admire the ability which you apply to your cases, your determination to think of nothing except your client's right, and determination to win by means consistent with honor. It is said you are worshippers of the golden calf, but I have on many occasions pointed out that we are told, "The laborer is worthy of his hire." Everybody works for money. The doctors work for money. The farmer does not farm for altruistic reasons. The shop-keeper would close his doors if his bills were not paid, and I am reminded of the minister's child, who was asked if her father was going to accept a call to a larger church at a larger salary. "Well," she said, "Father is in the library praying for guidance, but mother has started packing up." All this has been said hundreds of times and still we hear the parrot-cry that lawyers work for money. It is well that we treat the charge with contempt.

But to whom much is given of them much will be required.

You and I every day are applying the principles of justice to the determination of the rights of private individuals or corporations, or for the avenging of the wrongs of private individuals or corporations, their rights having been infringed by other corporations or private individuals. We are doing this on the principles of right and justice upon which your forefathers, and mine, for centuries have been willing that their rights shall be determined. Now, is there any more reason why such rights as these shall be determined in this manner than that the rights of nations shall be thus determined? Is there any more reason why the rights of private individuals should be avenged through and by the courts than that the wrongs of nations shall be avenged through and by the courts? Is there any more reason why men no longer should raise the club, sword, and gun in order to get that to which they are personally entitled, than that a nation should do the very same thing? Are we not, my friends, sadly blinded to a great part of our duty? No man is to be allowed to avenge his right by his own right arm, but that is to be left to an independent tribunal. Why does that rule not apply to a nation? Of course, a national insult makes the blood boil; but does not also personal insult make the blood boil; and have we not learned to keep the blood from boiling? And why, as Christians, should we not learn to do the same thing when our national rights are being infringed upon?

Let me tell you, if the members of the American Bar were united upon this question, marvelous effects would ensue. There is no other body in this great Union so strong as the bar; there is no other body that feels its solidarity like the bar; there is no other body which can be made to move as one man like the bar—and if the members of the bar of these magnificent States were to be as one man in determining that hereafter there shall be no war, the effect would be marvelous. England is a unit for peace. I believe the American people are at heart a unit for peace. My friends, if these two great Nations were to say, "As between us there shall be no war and all troubles between us shall be determined by some judicial body," the end of war would be very near. Two Nations with such glorious history, two Nations with their keen sense of justice and honor, two Nations like these

which fear and need fear no foe, because there is no foe who dare face them—if these two Nations should say, “Hereafter, between us there shall be peace”, then what nation is there, however strong, however proud, which would decline to follow their example?

I ask no treaty, offensive and defensive, between this mighty Nation and that of which I form so insignificant a part. There is that which is stronger than a parchment bond; there is that which is more lasting than ink written by quill or gold or steel; and it is as certain as the path of the planets around the sun that two peoples like these, sprung from the same race, worshipping the same God, in the same forms, with the same language; two peoples who have had centuries of glorious history in common and who love each other and cannot help it, because blood is thicker than water—it is, I say, as certain as the path of the planets around the sun, that these two Nations will stand side by side, if necessary will fight side by side, for truth and justice and righteousness. There is here and there a man in your Nation, as here and there a man in mine, whose ideal is different—the fool ye have always with you. It is an awful thing to be a fool, and there is no cure for it. We have an occasional ass who likes to pull the feathers from the Eagle’s tail, as you have an occasional fool who likes to twist the Lion’s tail—but such, and their like, we may pass over. We have a real, living, almost visible Union of which most of us are as assured as we are proud and glad. It is that Union to which I am fond of applying the words of your American poet:

Sail on, O Union, strong and great!
Humanity with all its fears,
With all the hopes of future years,
Is hanging breathless on thy fate!
Sail on, nor fear to breast the sea!
Our hearts, our hopes are all with thee,
Our hearts, our hopes, our prayers, our tears,
Our faith triumphant o’er our fears,
Are all with thee, are all with thee.

God grant that day of peace will soon come, and through us, for “Blessed are the peacemakers for they shall be called the children of God.”

FRIDAY FORENOON SESSION

9 O'CLOCK A. M.

THE PRESIDENT: The Association will be in order. There should be a Nominating Committee, composed of one member from each Congressional District, and the Chair is of the opinion that this committee should be appointed at once. We will take a recess of five minutes, and the delegates will get together and select their member for that committee. It might be well for you also to select at the same time members of the Executive Committee, one from each Congressional District.

On re-convening the following members of the Nominating Committee and Executive Committee were announced by the respective districts:

NOMINATING COMMITTEE

- 1st District, S. W. Livingston, Washington
- 2nd District, J. F. Devitt, Muscatine
- 3rd District, E. M. Carr, Manchester
- 4th District, J. O. Crosby, Garnavillo
- 5th District, John M. Grimm, Cedar Rapids
- 6th District, James A. Devitt, Oskaloosa
- 7th District, Lawrence DeGraff, Des Moines
- 8th District, L. H. Mattox, Shenandoah
- 9th District, I. N. Flickinger, Council Bluffs
- 10th District, R. M. Wright, Ft. Dodge
- 11th District, C. N. Jepson, Sioux City

EXECUTIVE COMMITTEE

- 1st District, Harold J. Wilson, Burlington
- 2nd District, Emlin McClain, Iowa City
- 3rd District, Geo. A. McIntyre, Shell Rock
- 4th District, C. E. Scholz, Guttenberg
- 5th District, C. H. Van Law, Marshalltown

6th District, U. M. Reed, Brooklyn
7th District, R. M. Haines, Des Moines
8th District, L. H. Mattox, Shenandoah
9th District, I. N. Flickinger, Council Bluffs
10th District, J. W. Morse, Estherville
11th District, George Jepson, Sioux City

THE PRESIDENT: There is a matter which I wish to speak of, and I am responsible for this suggestion. Mr. A. J. Small has been librarian of this Association for a number of years. We have during all the time he has been librarian stored with him at the State Capitol extra copies of the various reports of the various sessions. He has attended to sending out all these and has given a great deal of attention to the work of this Association. He has prepared indices for the reports, and his services have been valuable; in addition to that, this year, he did practically all the editorial work in preparing this volume of the Early Bar Association Proceedings. That involved a great deal of work. He has never been paid any money and I do not think expects any. But the laborer is certainly worthy of his hire. It has occurred to me, it would be a very proper thing for this Association to vote to Mr. Small the sum of fifty dollars, or something like that, which will be indeed an inadequate recognition of his services. This is a matter in the hands of the Association.

MR. J. L. CARNEY: I happen to know something in regard to the services of Mr. Small. I can verify what your President has said. I take pleasure in moving that an appropriation of fifty dollars be made to Mr. Small for his valuable services.

MR. R. M. HAINES: By way of amendment, may I raise that amount to one hundred dollars? I know Mr. Small has put in weeks of solid work. I wish we might make it one hundred dollars.

MR. CARNEY: I will accept the amendment.

The motion was unanimously carried.

MR. HAINES: There was a matter the President suggested yesterday in which I have felt a great interest, because of having been on the Committee for the republication of the Early Pro-

ceedings. I move you that the matter of having further copies printed be left in the hands of the President, Secretary and Librarian.

The motion was duly seconded and carried.

THE PRESIDENT: There is another matter to which I would like to direct the attention of this Association. Mr. Cooper, our efficient chairman of the Committee on Membership, has prepared some amendments to the constitution. I would like the unanimous consent of the house to appoint a committee of three to consider these amendments and submit a report later in the day.

If there is no objection, I will appoint Senator J. L. Carney of Marshalltown; Prof. H. C. Horack, of Iowa City; and Charles J. Wilson, of Washington.

The next on our program is a paper—"Some Railroad Problems", by Hon. J. L. Parrish, of Des Moines.

SOME RAILROAD PROBLEMS

Mr. President, and Members of the Iowa State Bar Association:

Following the receipt of an invitation of your President to prepare a paper for delivery on this occasion, there was a somewhat violent struggle between that modesty, which, I am sure, all of the friends of the writer will recognize as his predominating trait, and the desire to take advantage of the opportunity to suggest to the members of this Association a problem which I think deserves the prompt, thorough, and conscientious consideration of our patriotic people. Modesty was finally driven from the field, and I am therefore, inviting your attention to the future of our transportation systems.

Elbert Hubbard has said:

Next to agriculture, which is the primary need, transportation holds first place in economics.

Transportation is one of the prime necessities of our times; without it our present state of civilization could not exist. Imagine, if you can, our condition were the railroads of this country suddenly to be wiped out of existence—financial and industrial chaos would exist.

This does not mean that our transportation systems should be the masters of the people or that we should look upon them with awe or reverence, or that they are entitled to any peculiar rights or privileges not necessary to the performance of the public duties. But it does mean that our transportation systems are our indispensable servants, and in whose welfare, therefore, we have a direct interest. It is because of the public character of the services rendered by our transportation companies; because their services are indispensable to our present state of civilization and progress, that the power of regulation exists.

To say that the power of regulation exists because there has been given to the railroads the right of eminent domain is to put the cart before the horse; is to consider the power as of the nature of contract. The power of governmental regulation rests upon no such flimsy foundation. The right of eminent domain is conferred upon the carriers because it is necessary in order that they may perform their public duties. The power of regulation exists because the duties to be performed are public duties, because the services to be performed are essential to public progress and the welfare of the people.

That the power of regulation exists; that, within certain well defined constitutional limits, the government may control the service to be rendered by the carriers, and that this power ought to be exercised by the government, not only for the protection of the public, but of the carriers themselves, is no longer disputed by any well informed student of the subject. The exercise of a power or right always carries with it its burden of duties. The exercise of the right to propel your automobile along the highway or through the crowded streets of the city carries with it its attendant duties, varying in accordance with the surrounding circumstances. The exercise of the power of the city to improve or repair its streets, carries with it its burden of duties.

The exercise of the power of regulation on the part of the public is no exception to the rule. The exercise of this power carries with it certain attendant duties; about some of which there can be no dispute. If the public have the power to fix the number and character of trains which shall be operated, the number and character of stations, the character of safety ap-

pliances to be used and in this and other ways control the expenditure of the carrier; and if they have the power to fix the carriers' rates and therefore control its revenues, certainly the exercise of this power carries with it the duty to see to it that the carriers may, if they can, earn a revenue sufficient to pay their operating and maintenance expenses and a fair return on the value of their property. That the National and State Governments, acting for the people, are controlling both the revenues and expenses of the carriers we all know. Are they discharging the duty attendant upon the exercise of the power and allowing the carriers a fair return for their services? The question is one which may well receive the attention of all men interested in the welfare of their country. We are interested in it from two aspects.

If the people, through our governmental agencies are undertaking to regulate the revenues and expenses of the railways, which have been constructed with money furnished by a portion of our people, we are interested in learning whether or not our representatives are administering the trust with due regard for the rights of the people whose property is being used for a public purpose, for it is only an act of simple justice that the carriers should be allowed an opportunity to make, if they can, a fair return on the value of their property. Some years of experience in defending railroad cases before the "average citizen" uninfluenced by political considerations, has given me an abiding faith that he does not want, and will not knowingly allow, an injustice in this respect.

We are interested because it is necessary that the future development and maintenance of the railways should keep pace with the development of the country; and as we, the people, whether the railways are operated by private capital or through public ownership, must pay the bill, we are interested in their economical development and maintenance. It is well known that from various causes, for years, everything that has entered into the expense of operation and maintenance of railways has increased in cost, while their rates have constantly decreased.

No legislative body ever adjourns without having enacted legislation to increase the expense of operation and maintenance and

few, if any, ever adjourn without enacting legislation reducing the revenues. No body exercising the taxing power adjourns without increasing the cost to the railways. No commission, State or National, ever acts except to reduce the rates or increase the expense. Rarely is a railway able to resist a demand for increase in the wages of their employees. In fact about the only oasis in this transportation desert is an occasional farmer jury who seem to be about the only fellows who do not have their ears to the ground and their eyes glued to the newspapers looking and listening for public applause and political promotion. This sort of thing cannot go on forever. You cannot continue to increase the expenses and decrease the revenues of the carrier without eventually bringing disaster, not only to the railways and the people with whose money they are being operated, but to the public who have to depend on them for service.

The Executive Council of this State has kept a record of the gross and net earnings, the assessed value, taxes paid, etc., of the railroads in Iowa since 1884. The report for the year 1911 shows the tables for those years as follows:

[See table on next page.]

This table shows that with an increase in mileage from 7,106 miles in 1884 to 9,858 miles in 1911, and with an increase in gross earnings from \$35,490,225 in 1884 to \$78,444,295 in 1911 and with, in the opinion of the Council, an increase in value of more than fifty per cent per mile of road, there was a decrease in net earnings after paying taxes from \$13,316,807 in 1884 to \$12,400,498 in 1911. This table shows a decrease in the net earnings per mile, after paying taxes, from \$1,883 in 1884 to \$1,259 in 1911.

While there is at hand no data by which one can ascertain the value of the Iowa railroads, yet I am sure that those of you who are familiar with the subject will agree with me that this net of \$1,259 per mile is less than three per cent on the value of the property. But unfortunately this small net earning does not accurately represent the true situation. Those of us who are familiar with the subject know that this result was reached only by sacrificing the maintenance account. In other words, if the

COMPARATIVE STATEMENT OF ASSESSMENTS OF RAILROAD PROPERTY, EARNINGS AND TAXES REPORTED IN THE STATE OF IOWA FOR THE YEARS 1884 TO 1911, INCLUSIVE

Date Reported	Miles of road	Assessed Value		Gross Earnings		Percentage of assessment to gross earnings	Net Earnings		Per cent of assessment to net earnings	Taxes paid	Taxes per mile of road	Per cent of tax- es on gross earnings	Per cent of taxes on net earnings
		Total	Per mile	Total	Per mile		Total	Per mile					
1884	7,106	\$29,886,809	\$4,206	\$35,490,225	\$4,994	84	\$14,121,399	\$1,987	212	\$ 704,492.00	104	.038	.064
1885	7,445	31,215,888	4,206	34,149,124	4,587	92	18,154,199	1,767	286	858,755.00	120	.024	.080
1886	7,490	32,216,688	4,305	35,492,428	4,739	94	18,185,367	1,760	285	945,514.00	127	.028	.072
1887	7,912	38,850,891	4,850	35,281,206	4,691	109	13,472,785	1,724	270	987,027.00	132	.028	.071
1888	8,291	42,100,576	5,198	37,702,585	4,755	114	18,671,848	1,725	301	1,018,781.00	28	.037	.071
1889	8,298	43,271,008	5,214	36,865,664	4,390	119	9,515,947	1,147	454	1,194,657.00	144	.080	.088
1890	8,300	42,858,890	5,189	37,463,779	4,536	114	11,885,900	1,439	361	1,302,592.00	157	.036	.137
1891	8,377	44,558,606	5,316	37,689,558	4,522	118	10,986,373	1,312	405	1,245,844.00	151	.038	.105
1892	8,408	44,566,157	5,316	44,416,488	4,810	111	12,625,800	1,503	354	1,246,224.00	149	.038	.114
1893	8,478	44,869,784	5,392	44,284,053	5,223	101	12,786,558	1,502	352	1,322,532.00	157	.038	.104
1894	8,477	44,873,686	5,392	42,634,972	5,029	105	12,467,568	1,470	360	1,408,785.00	166	.032	.111
1895	8,481	44,876,543	5,392	85,874,444	4,230	124	10,365,990	1,232	428	1,355,825.00	160	.032	.109
1896	8,487	44,881,211	5,329	87,658,442	4,488	118	12,575,952	1,481	358	1,377,678.00	162	.038	.133
1897	8,471	44,373,916	5,239	89,632,290	4,671	112	12,430,234	1,465	357	1,382,564.00	163	.037	.110
1898	8,474	44,338,782	5,244	41,835,098	4,877	107	13,403,234	1,582	381	1,388,908.00	163	.035	.110
1899	8,518	44,550,129	5,280	46,202,908	5,424	96.4	15,532,068	1,828	287	1,404,451.00	166	.031	.105
1900	9,286	46,008,510	4,981	49,549,679	5,364	92.8	15,586,967	1,685	296	1,424,124.00	167	.031	.092
1901	9,386	47,071,258	5,042	52,354,817	5,607	89.9	15,094,072	1,616	312	1,509,370.00	168	.030	.097
1902	9,414	47,307,950	5,049	56,079,948	6,018	81.5	15,460,375	1,766	312	1,568,492.87	169	.030	.104
1903	9,735.8178	56,541,518	5,814	56,466,305	5,965	100.1	17,124,102	1,807	329	1,628,496.46	174	.039	.099
1904	9,799.6868	57,585,160	5,871	58,466,340	6,019	98.4	15,076,168	1,552	381	1,874,419.17	199	.038	.109
1905	9,799.2288	58,190,189	5,937	57,396,848	5,657	101.4	15,845,574	1,666	379	2,141,868.88	220	.036	.142
1906	9,827.0308	62,387,199	6,343	62,792,807	6,408	99.8	19,258,958	1,964	324	2,089,851.74	218	.036	.136
1907	9,834.2208	68,384,130	6,447	79,791,348	7,114	90.6	21,890,793	2,231	289	2,211,682.18	225	.035	.115
1908	9,876.82	68,457,616	6,425	73,081,792	7,451	86.4	18,919,380	1,966	326	2,312,742.68	236	.038	.106
1909	9,878.78	68,863,895	6,445	67,767,082	6,870	93.8	17,939,211	1,819	354	2,412,724.79	244	.036	.134
1910	9,794.257	68,729,447	6,506	72,169,276	7,378	88.3	16,144,598	1,651	394	2,605,375.51	265	.035	.155
1911	9,856.239	65,824,432	6,678	78,444,295	7,959	83.9	15,028,007	1,526	438	2,627,502.25	267	.038	.175

railroads of Iowa had spent as much as they should in repairing their roadbed and tracks, in repairing their stations, stockyards, fences, their equipment, and the many things necessary to maintain a standard railroad, this small net for 1911 would have shrunk to nearly nothing, if it had not altogether disappeared.

Turning to the national field, the outlook is little, if any, more promising. A few roads there may be which, on account of their advantageous location with respect to rates or competition or density of traffic, are fairly prosperous, but with the great majority of the roads the situation is becoming serious. The net earnings of the railroads of the United States were over seventy million dollars less in the fiscal year ending June 30th, 1911, than for the fiscal year ending June 30th, 1910, and at the same time the amount expended for maintenance of way and structures decreased more than eleven million dollars. A comparison of the calendar year of 1911 with 1910 shows a decrease of net earnings of more than forty million dollars and a decrease of over twenty-eight million dollars in maintenance. We, of course, have not at hand data by which we can compare the results for the fiscal year ending June 30th, 1912, with former years, but from the data we have, we already know that the net earnings for this year will be many million dollars less than even the year 1911.

What of the future? Unfortunately there seems to be no cessation in the activities of the powers having jurisdiction over the carriers. There is constantly pending before all legislative bodies while in session, all Commissions—State and National—city councils, taxing bodies, etc., bills and proceedings looking to the further increase of the expenditures and decrease of the revenues of the carriers, while if you should go over the record with a vacuum cleaner you would not find a trace of anything looking to their relief.

The immediate and pressing need of the railroads and one which will last far into the future is capital with which to enlarge their facilities, especially to build and enlarge terminals in the cities where ground is expensive, to elevate tracks, build viaducts, to eliminate grade crossings, build new depots, etc. This capital cannot be obtained unless the railroads are permitted to earn a reasonable return on the value of their property.

All this does not mean that government regulation is wrong in principle, or that the carrier should not furnish adequate service, or the best track and equipment, or adequate facilities, or that the railways should not pay their fair share of the taxes, or pay fair compensation to their employees, or that the industry should not bear the risk inherent in the business, or that the railways should not cease to discriminate between shippers. All these things should be required of them, but having discharged their public duties, the Government—State and National—should see to it that their revenues are adequate.

In this matter the railways are helpless, there is nothing in their wrongs that appeals to the newspapers; the politician does not have his ear to the ground, or any place else, to learn what are the wishes of the railroads and unless the average conservative, conscientious, and patriotic citizen takes an interest in this matter and sees to it that justice is done, disaster is going to come.

The future of the railroads is threatened by the peril of starvation. The only escape is through the enlightened, intelligent understanding of the situation by the public, whose will in this matter will always be followed by those who are delegated to exercise the power of regulation. It is time we stopped talking about such bogey men as the "interests", "watered stock" and "enormous dividends" and study the situation as it actually exists. An educational programme, which will result in an understanding of the situation will make it possible to continue to successfully operate our railroads with private capital with a reasonable degree of satisfaction both to the investor and the public.

The alternative is probably government ownership. It isn't the purpose of this paper to discuss the merits of government ownership of railroads, except to suggest that those of us who have had any considerable experience with bureaucratic government as illustrated by some of the governmental departments at Washington, will hardly want to have it extended to include the carriers of this country.

THE PRESIDENT: I had already announced that the Annual

Address would be given at 11 o'clock, and as it lacks almost an hour of that time, we will take up the report of the Committee on Law Reform, to be presented by Dean E. B. Evans:

CHAIRMAN EVANS: In reading the history of that part of our proceedings which we are now taking up, as outlined in the records we have made heretofore, I have discovered a tendency on the part of the Association to treat the Committee on Law Reform as that portion of our Association which is entitled to be placed immediately in front of our modern steam roller.

I do not know that the committee are to have this experience this year. Our report has been in your hands, except a supplemental matter, to be presented later, and is sufficiently plain, so that every lawyer will understand it fully, and I doubt if any argument might be made either for or against which would modify our individual opinions as to the merits of the report.

I therefore will introduce as Exhibit A, in favor of the recommendations of the Committee on Law Reform, that magnificent address which closed our banquet last night.

The report of the Committee is as follows:

To the Iowa State Bar Association:

Your Committee on Law Reform submits the following report. Of the propositions submitted below we recommend for adoption Nos. 1, 2, 3, and 4, and submit for discussion No. 5.

I

That the Legislature should adopt the following section:

"No judgment shall be set aside or reversed or new trial granted by any court of this State in any case, civil or criminal, on the ground of misdirection of the jury, or for error in the admission or rejection of evidence, or for any error as to any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire cause, it shall appear that the error complained of has injuriously affected the substantial rights of the parties."

II

That the Committee on Law Reform be authorized and directed to prepare or cause to be prepared a bill, to be submitted to the next General Assembly, providing for an increase in the number of Supreme Judges, so that the number shall be not less than nine; that the court shall be divided into two sections of not less than five each, the Chief Justice to preside over the meetings of each section; that one section shall meet to hear oral argu-

ments in the forenoon, and the other section in the afternoon, of each day of the term set aside for submission of causes; also for an equitable distribution of the causes appealed between the sections.

III

That the Legislature should adopt the necessary amendments to the laws so as to empower the trial court to limit arguments in jury cases, provided, that in no case shall the argument for each side be limited to less than one hour; and, provided, that in the more important civil cases, and in all criminal cases, the limitation should not be less than three hours to a side; and in criminal cases involving a death penalty, or a possible life imprisonment, no limitation should be made.

IV

That the Legislature should adopt the necessary amendment to the present laws to provide for a verdict agreed to by nine jurors in all civil cases, and in criminal cases where the punishment is less than life imprisonment; such verdict, however, not to be accepted by the court until the jury have deliberated for a period of not less than ten hours.

V

That the names of all persons who are candidates for nomination to either the Supreme or District bench shall be printed on a ballot distinct and separate from the primary ballots of the various parties, and a copy of such primary ballot shall be furnished to each and every voter participating in the primary; that the two men receiving the highest number of votes for each office shall be declared the nominees for that office, and the names of the two candidates thus nominated shall be printed on the ballot of each political party at the election.

Respectfully submitted,

E. B. EVANS,
J. J. CLARK,
M. A. ROBERTS,
C. H. VAN LAW,
E. W. WEEKS,
A. N. HOBSON.

Judge Roberts, while not offering any specific objection to the first and fourth items of the report, does not join in recommending them. Senator Van Law would limit proposition IV to civil cases only where the amount in controversy did not exceed \$2000.

As to the first proposition, we have in our procedure a law which permits the court to proceed with the trial of a case in the face of an application for a continuance, based upon the absence of material witnesses, if there appears in the record as resisting

the application for a continuance, a statement as to what the witnesses would testify to, and it is consented that may be read as the witnesses' testimony. Following along the same line, the proposition contained here, after the trial of the case, if the court should consider that the evidence which has been excluded or admitted, or that the instruction of the court which has been given or refused, or that in any other procedure, there was error, that the court should not thereby grant a new trial, unless after reading the record, with the error corrected, the court should conclude that the error injuriously affected the substantial rights of the parties.

I move the adoption of the report as to the first recommendation.

The motion was duly seconded.

MR. J. L. PARRISH: My experience with the Committee on Law Reform has led me to the belief that it considers it its duty to furnish material for the amusement of the Association, rather than something supposed to be enacted into statute.

Now, the term "reform" seems to have a sort of hypnotic influence over them. There is danger, I think, of enacting such legislation, on the theory of some process of reform, without considering seriously the proposition.

This subject was disposed of at Oskaloosa and I thought we were through with it, but it seems to have bobbed up again.

Referring to section 3601 of the Code, which reads:

Errors Disregarded. The court in every stage of an action must disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

That section of the Code has been before our Supreme Court a great many times, and it is one of the sections of the Code, I think, they have construed and the court has held as the settled law in this State, that an error does not entitle a party to a new trial or reversal in the Supreme Court, if from the record it appears that the error was not prejudicial. Now, that is the proper view of the law. If it appears that the error would not do any harm, you ought not to have a new trial.

It is now proposed to change that presumption; that is, the presumption now is that error is prejudicial. If an error is committed by the introduction of improper testimony, incorrect instruction, or any other error, it is presumed by the court of last resort that the error is prejudicial; but if it appears from the record that no prejudice resulted, it is not entitled to a reversal.

You all know that there isn't a session of our court but what there is case after case decided and opinions filed, in which the court says, that this error was committed or another error was committed, but that it was not prejudicial and therefore it is not reversible.

By this recommendation it is proposed to change the presumption, so that whenever you take a case to the Supreme Court, or on a motion in a *nisi prius* court, the presumption would be that the error was not prejudicial, and it would be up to you to show from the record, that the error was prejudicial. Now, I have never discovered any method of doing that.

The former chairman of this committee, in presenting this resolution two years ago, said that if you introduced testimony in a case that wasn't material, that the jury would be wise enough not to take it into consideration. I undertake to say, when the court has passed on the competency and materiality of the testimony, it is the business of the jury to take it into consideration; that they have not done their duty if they do not. It is the court that determines the legal questions. Suppose, in a case, under this proposed practice, there is testimony clearly incompetent and immaterial introduced, or the court gives a clearly erroneous instruction, or submits to the jury an issue not supported by the testimony, how are you going to show now in your record that the jury paid any attention to this testimony, or that they followed this erroneous instruction, or that they returned a verdict upon an issue which was not supported by the testimony? I haven't learned of any way yet in my practice to do that. You are not permitted, under our statute, to procure and furnish affidavits of the jurymen. You probably couldn't get them any way, and you ought not to be permitted to do that.

So that, if this recommendation should be passed and it should

be enacted into law, you might just as well abandon all your appeals in law and criminal cases, because, as I say, there is absolutely no way in which you could make your record show the prejudice resulting from the error.

It seems to me this is one of the alleged reforms that does not touch the vital part. I am in favor of any reform that will make our system of procedure more simple, and that will reach the ends of justice, but what I want, is some opportunity to get justice.

MR. R. M. HAINES: It has seemed to me without regard to the merits of the proposition which is presented to us this morning, that there is, in a sense, a certain impertinence in presenting to this Association year after year, meeting after meeting, the questions which were discussed fully, and fully settled. It seems to me it cannot be otherwise, or somebody is riding a hobby, and it is hoped some day or other to catch somebody asleep at the gate, and slip that through the Association which does not meet with the deliberate approval of its members.

In order that this recommendation, which has been of a perennial sort, may be forever laid to rest, until the Association shall desire to take it up again, I move you that the first recommendation of the Committee on Law Reform be now laid on the table.

The motion was duly seconded.

MR. E. E. HASNER: I arise to a point of order. A motion of that kind is out of order in this meeting.

THE PRESIDENT: The Chair is of the opinion the house has the right to take up the report of the Committee on Law Reform, section by section, and deal with each proposition independently. That being the case a motion to lay on the table would be in order. But the Chair, in order to make clear his position desires to state in advance, that that does not affect any other portion of the report.

The motion is to lay section 1 on the table.

Upon call of a rising vote, the motion was declared duly carried.

CHAIRMAN EVANS: I cannot refrain from suggesting to my good brother Haines, that righteous things will come up every year in the future deliberations of this body, notwithstanding they are not always adopted. I would also suggest that it would require no greater knowledge or discrimination to determine this rule with the presumption one way than it does the other.

I now take up the second recommendation. I think this part of the committee's report needs no further explanation. We all know the congested condition of our docket. This matter was in substance before the last legislature but failed of passage.

I move its adoption.

Duly seconded.

MR. E. C. JOHNSON: I rise to a point of privilege. This section provides that the court shall consist of not less than nine members and shall be divided into divisions of not less than five in each division. If the court is organized with nine members, wouldn't it be somewhat embarrassing to undertake to divide it into two sections of five each?

MR. JAMES O. CROSBY: This matter was up for discussion at the last session; if my memory serves me right, it was referred to a committee to present a bill. I think that this would hardly be constitutional. I think provision can only be made for one judge at each session of the Legislature. Here we are asking to have three new ones put on. Then there are good reasons why there shouldn't be more than one added to the bench by any one session of the Legislature—it is using up the inheritance tax surplus too fast.

JUDGE MILO P. SMITH: There is exceptional merit in the remark made by our friend from Garnaville that it is using up the surplus a little more rapidly than the occasion calls for.

Will the work of the Supreme Court be expedited by four men in a division, instead of three? We now have six members. I am informed that they have divided into two divisions. The only difference would be that of having four instead of three to pass on an individual or particular case.

Something was said about the work being onerous. Well, I never knew any work in my life that wasn't onerous. One thing

is true, and that is that the learned jurists on the bench now are closer up with the work than ever before. I know from observation and from what has been said to me by eminent members of the court, that within twelve months from the time a case is tried in the District Court, if the attorneys are expeditious, they can receive a decision from the Supreme Court. I know that to be true. Could we do that formerly, when, as we were told last night by our learned friend, Major Lacey, that the judges served for from one thousand to two thousand dollars a year? We never received a decision then inside of two years. I well remember cases that were taken up at the breaking out of the war, that were not completed until after the rebellion was crushed. They act more expeditiously now than they ever did before, and I do not believe that an accession of two more members to the Supreme Court is going to expedite the disposition of cases that are appealed there. If it were a question of increasing their salary, I would vote for it, especially the salary of the District Judges.

CHAIRMAN EVANS: I think the Judge is correct in his suggestion that there may be a division in the Supreme Court at the present time, but my information is, or suspicion is, the division is about this: that by reason of the great amount of business before that tribunal, generally one man considers a case in detail and studies the record. The main reason for this increase would seem to be so as to enable more than one judge to become entirely familiar with all of the record, as well as to expedite the business.

You will note this section does not deal in detail. The Chief Justice presiding over each section as herein suggested, would perhaps as now be assigned there by law or rule of the court. Another object sought to be accomplished that will appeal to you, is, that by having two sections there would be less time elapse between the oral argument and the final decision of the case.

THE PRESIDENT: The Chair for the information of the Association desires to say, that at the last session of the Legislature a bill did pass the Senate providing for an increase in the number of judges; that bill, however, was defeated in the House.

JUSTICE SCOTT M. LADD: I simply rise to call attention to the

fact that the statute requires the Supreme Court Judges to divide into divisions for the original consideration of cases. I think I ought to call attention to the fact that Dean Evans is entirely mistaken when he intimates that the judges are disobeying this statute by only one judge considering a case.

DEAN EVANS: The suggestion was that there was a suspicion.

JUSTICE LADD: I have heard that the judges, not only the Supreme Court Judges, but all District Court Judges, and all members of the Legislature are ignoring their duty and having their ears close to the ground, and that only a farmer jury must be trusted to deal fairly with the railroad corporations. I think it is about time suspicion should cease unless it is founded in fact.

MR. PARRISH: A year or two ago, I did a little figuring on this proposition. I found, in the years during which I looked up the record, that almost eight hundred cases were submitted to the Supreme Court, and I think some seven hundred opinions were filed. Now, if you take out the days of the court that are consumed in travel, and the days which the court take for their vacation, and to which they are entitled, and the days when oral arguments are heard at the different periods, you will find that the court has only about two hundred days out of the year in which to consider these cases. I know and you all know that a man who works more than six hours a day at the kind of work that this court has to do, cannot continuously do good work. Six hours a day is all the time that a man ought to put into the work.

JUDGE MILO P. SMITH: Can you tell me how four men can work more expeditiously than three can?

MR. PARRISH: That is not the point I am going to make. If you have two hundred days at six hours a day, that means twelve hundred hours for the consideration of these cases, and if you have eight hundred cases, you have an hour and a half for the consideration of each case by the whole court. Now, we all know, you cannot commence to read the pleadings in most of these cases in an hour and a half. I say, in my opinion, it is impossible for any court, organized as this court is, with the work

that it has to do, to do themselves and the litigants justice, and some measure ought to be taken by the Legislature to relieve the Supreme Court. They do not, in my opinion, have sufficient time to give to these cases. Just what that method should be, that perhaps is something we do not need to discuss so very much here, because the Legislature will fix it up to suit themselves. What we want to do, it seems to me, is to give the proposition of some relief for the Supreme Court support in this organization.

CHAIRMAN EVANS: Just one suggestion: This contemplates each section rendering its own decisions, and a division of the cases, so there will be no consideration before the entire nine judges of any one of the cases, and leaving out the detail which we have, it simply means, we will have twice the time for the cases we now have with five judges in each division deciding cases, and not nine judges divided as we have it now.

MAJOR JOHN F. LACEY: That practically results in having two Supreme Courts with the same Chief Justice presiding over each. Of course, there is rather an Irish bull in the drawing of this resolution. As Casey said at the shaft: "How many boys work in the shaft?" "Just five," said one of them. "Half of you come up."

We submit a question to one of these double barrelled courts, and four are unanimously in favor of a certain legal proposition; the other four have another case in which the same question has arisen; now, you have got two courts, each of them deciding the same proposition and each of them being coördinate, and one or the other has to yield—perhaps as a matter of practice they might arrange that among themselves. This proposition is to establish two courts. They have that in Nebraska. They have it in other States.

After all, one of them is to pass on and decide the case ultimately and be responsible for the regularity and uniformity of the decision. This proposition is to make two courts; one a forenoon court and the other an afternoon court, and have a chief justice sitting all day.

SENATOR C. H. VAN LAW: As I remember the provisions of the bill which passed the Senate at the last General Assembly, the

objection just suggested by Major Lacey was obviated by a provision that the case might be submitted to the entire court, on questions they might be disposed to divide, upon motion by the court itself, or petition of the litigants, so that there would be harmony, so far as the majority of the court was concerned.

THE PRESIDENT: The Chair desires to suggest, that it is not desirable for the bar to go into detail as to the measure. Your recommendations ought to be along general lines and leave something for the Legislature to do, because I can assure you, you never will draft a law in this body that will be accepted by the General Assembly without some changes.

SENATOR J. H. TREWIN: It has occurred to me that the members of this Association are agreed upon one proposition, that is, that some relief should be granted for a more expeditious disposal of appeals, and as I have sometimes thought, for a more lengthy consideration by the court of the cases that are presented. I think the objections taken to this recommendation by Major Lacey are entirely sound.

I would suggest this recommendation be referred back to the committee, that the committee make a recommendation in general terms, asking the General Assembly to provide for such measure of relief as the situation warrants. I think then we will be likely to have some results. We cannot expect it if this Association goes before the General Assembly divided.

JUDGE LAWRENCE DEGRAFF: I think this situation can be met at this time. The gist of the matter is to increase the number of judges, so that greater efficiency, presumably a greater amount of work, will be accomplished.

Therefore, I move you, Mr. Chairman, that the motion pending be amended by striking from paragraph 2 so much thereof as follows the semi-colon, beginning with the words, "that the court shall be divided", etc.

The motion was duly seconded.

CHAIRMAN EVANS: On the amendment of Judge DeGraff, and as a suggestion to the objection by Major Lacey and Senator Trewin, it seems to me if the proposition was carried into proper

legislation that we would find we had a Supreme Court to whom we would submit all equitable appeals, and another Supreme Court to whom we would submit law actions, probate and criminal procedure to be divided, so that the court could have as nearly as could be an equal amount of business. The suggestion of Senator Van Law illustrates that we are looking to the Legislature to work this out in detail, the main object being, the relief from the present condition, and a court to whom we may submit our appeals that we may have a little longer than an hour and a half for their determination.

MR. CROSBY: I would be in favor of this paragraph with the amendment offered or made, if the relief could be granted in this way. We have granted relief two or three times, starting with three judges at one thousand a year; then some more judges at four thousand, and then some more judges at six thousand, and now give them as many helpers as they want to divide the thirty-six thousand dollars equally between them.

THE PRESIDENT: The motion is upon Judge DeGraff's amendment.

Upon a vote duly taken, the amendment was carried.

THE PRESIDENT: The question now reverts upon the recommendation as amended by the motion of Judge DeGraff.

Upon a vote duly taken, the recommendation as amended was carried.

THE PRESIDENT: The President of this Association has been convinced for a number of years that nothing else so tends to mollify and soften the differences between families, peoples, and nations as intercourse one with another; the meeting in daily association, the conversation and discussion that come by reason of such association. Last night, at the close of our banquet, I was more than ever convinced that it is a good thing for nations to mingle together. Our distinguished ex-President, Senator J. L. Carney, last winter made a journey down to the West Indies. While there he met the gentleman whom I shall a moment later introduce to you. As a result of that international association, your President received a letter from Senator Car-

ney, suggesting that the distinguished Justice from the Province of Ontario be invited to deliver the Annual Address. Last night he responded to a toast at the suggestion of your President, and I am sure, when we separated that Mr. Justice Riddell was the friend of every member present, and that he felt that he was indeed the friend of every one there last night. He is here to-day to deliver the Annual Address, and I am sure you will be pleased to give him your careful, earnest, and thoughtful attention; and I think we shall greatly profit by his discussion, and that he will go home feeling that he has largely increased his circle of acquaintances and that he has been fully rewarded for the long journey he has made.

I have the pleasure of introducing to you Mr. Justice Riddell, of the King's Bench, Toronto, Ontario.

MR. JUSTICE RIDDELL: *Mr. Chairman, Ladies and Gentlemen:* I wish to say in beginning, that I thank my friend, Mr. Carney, and you, Mr. President, for the opportunity which I have had of meeting so many new friends in this State of Iowa. You have said that I have come a long way to see you. But you are not far from Toronto. It is not at all uncommon for me to go eleven hundred miles to hold court. If I want to go to an assize town, Kenora to the west of you, to open court there on Monday afternoon, I must leave Toronto Saturday afternoon. To speak to you on Thursday evening, I can leave Toronto on Wednesday afternoon. It is only twenty-three hours to Cedar Rapids: thirty-six to Kenora.

I did, indeed, last night, feel that I was amongst friends, because we are in reality, at the bottom, essentially and fundamentally one people. Notwithstanding that, I did not feel entirely at home at the banquet—there was one thing that made me feel a little queer; and that was, that I was the only speaker who did not have a manuscript. Now, I want you to understand, I have got just as good a manuscript to-day as anybody, and I can dictate a manuscript with any white man on the face of the earth. I do not like them. It is a wholesome thing to look into wholesome faces. The only reason I dislike standing here is that I cannot see your faces, and at the same time the expansive and persuasive face of my friend, the President.

I have reduced to black and white what I have to say to you. I have not, indeed, that standing excuse, "unaccustomed as I am to speaking", because for several years I have been addressing all sorts and conditions of men, some sorts and conditions of women, and occasionally children; and indeed, most of my addresses have been off hand talks. Recently they have been chiefly to twelve men who have got into a box and cannot get out till I let them. Neither can I say honestly that I do not know at least something about what I have to say to you. The difficulty is, on a subject of that kind one always wants to talk too much; and if you want to reduce what you have to say to a small compass, the only way to do is to put it in black and white. I may be to a certain extent influenced by a consideration which suggests a story I heard in your neighboring State, Missouri, about a circuit judge who missed his renomination. His father-in-law had a bank, and he became cashier of the bank. One day, it is said, a gentleman came in with a check. The cashier said he had better endorse it. After he had done so the cashier asked him whether that was his name. "Of course," he said, "that is my name; don't you know me?" The cashier replied: "Your face looks a little familiar to me but I can't exactly place you." The gentleman replied: "Surely you know me perfectly well; I am the very man that nominated you the time you ran and got elected." The cashier said: "Well, your face does look a little familiar; of course I knew your name first rate; but I think you had better be identified." The gentleman replied: "Blame it, Judge, I have seen you hang men on less evidence than that." "That is all right, but when you are going to pay out money, you have got to be careful." It may be, when I come to speak to American lawyers on the American Constitution, I have got to be careful; and that may also be a reason for what I shall have to say to you being reduced to black and white.

THE CONSTITUTION OF THE UNITED STATES AND CANADA

The other day, in a train leaving Toronto I overheard an earnest voice saying "But that can't be constitutional—the Supreme Court will upset that." I at once said to myself, "That is an American speaking"—for in my association with

citizens of this favoured land, I have found that a great part of their time and the time of their courts is taken up in the discussion of the constitutionality or unconstitutionality of enactments of their legislative bodies.

In Canada, on the other hand, we very seldom find it necessary to mention the Constitution at all. It is a somewhat curious circumstance that two neighbouring peoples of the same origin, the same tongue and religion, kindred aspirations and identical views of justice and right should differ so much in their conception of a constitution; it is I think unparalleled in history. In the ultimate analysis the difference arises from the fact that the fathers of this Union of States knew how to write; and that having the power, they had that desire to reduce their views to a written form which characterizes the philosopher.

In the mother country, the philosophic students of the problems of politics gave written expression from time to time to their views also—but these students differed from those philosophers in that they had no power to cause their writing to be adopted as a binding document. No more profound studies have ever been made in the theory of government and concerning the balance of function of its various departments than those of Englishmen—but Englishmen could give them only as speculations, they had not the power to have their theories adopted by the Nation at large.

The fathers of this Nation, when they had drawn from English and other sources what they conceived to be the true principles upon which government should be carried on, went further and formulated their theories in a document framed with much skill: and they had the fortune to have that document declared binding upon not only the Nation as it then existed, but also upon the Nation—speaking generally—as it was to be to the end of time. And this is why the words “constitution” and “constitutional” have such different connotations in the two countries.

In the United States the Constitution is a written document containing so many letters and words—and anything which is in accord with that document is constitutional. In England the Constitution is the aggregate of the more or less vague and uncertain principles upon which the affairs of state have been, and

therefore should be, administered. For example, in theory the Sovereign has the right to refuse to assent to a bill which has passed both Houses of Parliament. No Sovereign since Queen Anne has ventured to do this—and the theoretical right is dead as Queen Anne herself. No Sovereign would now dream of setting up his will against that of his Parliament—to do so would be unconstitutional. But there are many parts of the Constitution by no means so well-settled. If five years ago a statesman or lawyer had been asked whether the House of Lords could reject a budget passed by the Commons, he would have answered—"The House of Lords no doubt can, but it will not." It was thought by many, if not all, that such an exercise of power by the House of Lords would be as unconstitutional as the refusal of the Sovereign to assent to a bill. And yet we know that the House of Lords did recently assert just such a power—and we have not yet heard the last of the results. Apparently the last fight of entrenched privilege in Britain against the insistent demands of democratic freemen has just been fought. In the old land when the question arises, "Is this proposal constitutional?" the answer cannot be given by reference to a document and if necessary to a court to determine the meaning of the document—but it is the electorate who are asked for the answer.

"*Littera scripta manet*": the American may say, "I stand upon the letter of the Constitution: let the heathen rage and the people imagine a vain thing."

And does all this not show that the fathers of the Union had not confidence in the wisdom and justice of the people—the electorate? They were not content to leave to the existing or to future generations the power to act contrary to what they—these fathers—thought just and right. If it was not "No doubt but ye are the people and wisdom shall die with you", was it not perilously near to it? The result is that the people of the United States of America are governed, in part indeed, by the Legislatures elected by themselves, but in no small measure by the hand and voice of the dead.

And this is the essence of what is so often made a boast, namely, that its government is a government of law and not of men.

Wherever there is a written Constitution limiting the powers of legislative and executive bodies, there must of necessity be a judicial body to interpret the meaning of the Constitution—there must of necessity be a tribunal to determine the meaning of the document in case of dispute—that tribunal could not well be the Legislature or the Executive itself, but it must be a separate tribunal and could only be a court. The absence of such a tribunal means anarchy—the decision as to the limits of its own power under a written Constitution by Legislature or Executive means tyranny, neither of which the Anglo-Saxon can bear.

In our exemplar Britain, the Parliament is absolutely free. “The power of Parliament is so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds. It has sovereign and uncontrollable authority in the making, confirming, enlarging, restricting, abrogating, repealing, reviving and expounding of laws concerning matters of all possible denominations.” This statement of Blackstone (Book 1, at page 160) was cited with approval in a decision of my own which was affirmed by the Judicial Committee of the Privy Council, the ultimate appellate tribunal in the Empire: *Florence, &c., v. Cobalt* (1908), 18 O. L. R. 275, at p. 279.

“It is a fundamental principle with English lawyers that Parliament can do everything but make a woman a man and a man a woman”, says DeLolme. “An Act of Parliament can do no wrong, though it may do several things that look pretty odd”, says Sir John Holt, C. J., in *City of London v. Wood* (1700), 12 Mod. 669, at pp. 687, 688. Sir Edward Coke who advanced the proposition in *Bonham’s case*, 8 Co. 118 (a), that “The common law will control Acts of Parliament, and sometimes adjudge them to be utterly void” was properly rebuked by Lord Ellesmere, Note in Thomas & Fraser’s edit. of *Coke’s Rep.*, Vol. 4, pp. 376, 377 (see, too, what Coke says as to the Acts of Parliament against natural equity in *Co. Litt*, sec. 212). “This dictum once had a real meaning but it never received systematic judicial sanction and is now obsolete. . . . A modern judge would never listen to a barrister who argued that an Act of Parliament was invalid because it was immoral or because it went beyond the limits of parliamentary authority.” Dicey’s

Law of the Constitution, 7th Ed., p. 59, note (1), pp. 60, 61. "The words of the Legislature are the text of the law and must be obeyed", per Hamilton, J. (1911), 1 K. B. at p. 1101.

Nor is there any definite line of decisions in America before the Revolution in the opposite sense.

No doubt the Colonial Courts in considering the Acts of Parliament of the mother country strove to make what they considered to be right and justice override certain of the statutory provisions. But it cannot, I think, be said that any court in the English Colonies went so far as to say that there was a limit set to the power of the home Parliament by any natural or inherent right.

The South Carolina case of *Bowman v. Middleton* (1792), 1 Bay 252, did, indeed, decide that an act of the Assembly passed in 1712, which purported to transfer the fee in certain land from the heir-at-law to another, was null and void "as it was against common right as well as against Magna Charta to take away the freehold of one man and vest it in another." But this decision by no means impugned the power of the home Parliament to do what the Colonial Assembly had tried to do; and is simply in substance a decision that the Colonial Assembly had not the power to repeal Magna Charta.

No other case went so far as to declare any statutes invalid as against natural right—although, indeed, there are many *obiter dicta* which indicate that certain very learned judges held the opinion attributed to Coke. In the case of *Winthrop v. Lechemere*, in 1727-8 mentioned in Thayer, pp. 34 sqq., their Lordships of the Privy Council advised His Majesty to declare an act of the Assembly of the Colony of Connecticut in respect of land of intestates null and void as against the common law of England, but that was to be an exercise of royal prerogative.

The act (30-31, Vic. c. 3) which constituted the Dominion of Canada has in the preamble the following:—"Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdoms of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom". This preamble correctly sets out the desire

of the British North American Provinces and correctly indicates the result of the British North America Act. Our Constitution is similar in principle to that of the United Kingdom.

It is true that there are modifications—as there must needs be where more than one body is intended to legislate with absolute authority within the same territory. The Dominion Parliament was intended to have unlimited power (in respect of certain matters) within Canada generally; the Provincial Legislature unlimited power (in respect of certain other matters) within the particular Province. The determination of objects of legislation of Dominion and Province must, of course, be in writing; the division appears in sections 91 and 92 of the British North America Act. To this extent there is a written Constitution for the Dominion of Canada and the courts have been called upon to interpret the British North America Act and thereby to determine the power of Dominion or Province to legislate in respect of some specific matter.

It has been said by an American writer that in Canada the word “unconstitutional” has a meaning corresponding to its use in the United States. This is an error. We use the word in the same sense and with the same connotation as in the Old Land. Careful speakers and writers use the phrase “*ultra vires*” for “unconstitutional” in its American meaning; “*intra vires*” for “constitutional”.

But while the Dominion and the Province have a restricted list of subjects upon which they may legislate, and they can do nothing outside these limits so set, still when acting within these limits they have “plenary powers of legislation as large and of the same nature as those of Parliament itself.” So said the Judicial Committee in *Reg. v. Borah* (1878), 3 A. C. 889, at p. 904. Within the limits of subjects and area the Legislatures are supreme and have “the same authority as the Imperial Parliament.” *Hodge v. Reg.* (1883), 9 A. C. 117, 132. In a judgment in *Smith v. London* (1909), 20 O. L. R. 133, at p. 137, I put it thus:—“The powers of the Legislature of the Province are the same in intension though not in extension as those of the Imperial Parliament. The Legislature is limited in the territory

in which it may legislate, and in the subjects: the Imperial Parliament is not—that is the whole difference.”

And, where the particular subject of legislation is not mentioned in the lists, the Dominion has the power—the residual legislative power, which in the United States rests in the States, is in Canada in the Dominion.

Before speaking of special acts of legislation, I might be allowed to say a word or two as to the Executive.

The head of the United States is elected from time to time. His powers are analogous to those possessed many years ago by the King. He selects his own ministers, and they are his ministers subject to dismissal at his will—it is his policy which they must carry out and they may safely defy public opinion so long as they have his approval. In Canada the head of the State is the Governor-General, or in the Province the Lieutenant-Governor, representing the King; he must, however, take such ministers as the Parliaments say—the ministers must have the confidence of Parliament and the approval of the Governor is as naught compared with that of the House. The King, i. e., the King's representative, must carry on the affairs of the country through ministers, and he can do nothing himself. If he would dismiss a minister he must find some other minister who will take the responsibility of advising this dismissal and obtain the support of the House in such advice—or if he cannot obtain the support of the House, he must be able to obtain the support of a new House upon an appeal to the country. We do not have the fixed and set periods for the election of our legislators which are characteristic of the United States system. Whenever it is thought advisable by the government of the day to take the opinion of the electorate, the Governor-General or Lieutenant-Governor, as the case may be, will direct an election—or if he refuses to direct an election, he must find an administration who will take the responsibility of advising refusal—and such administration must find support in the existing House—or upon an election, if that administration goes to the country. It is true that the life of a Parliament is in Canada limited to five or (in the Province) four years—but that is by a statute of Parliament itself, and the same Parliament may extend or shorten the

period. It is seldom that any Parliament lives out its statutory life—generally a favourable opportunity offers to take the opinion of the electorate on some more or less important question. No one can tell a month in advance when an election will take place. Then the ministers, who are rigidly excluded from the Legislatures in your system, not only may, but they must, have a seat in the Legislature in ours.

There is a marked difference in the relative importance of the two houses of Parliament in Canada and the two houses in the Provincial Legislatures (where such exist) on the one hand, and the two branches of Congress or State Legislatures on the other. This may be in part due to the fact that members of the Senate in the United States are elected for a limited term, while in Canada Senators are nominated by the Governor-General, i. e., by the administration for the time being in power at Ottawa, and Legislative Councillors who, in the two Provinces which have second chambers, correspond in the provincial field to Senators in the Dominion, are nominated by the Lieutenant-Governor, i. e., by the local administration (we have only two Provinces which have a second chamber in their Legislatures and have found the monocameral system to work well).

It is the House of Commons, the Legislative Assembly, which counts in Canada—the Senate, the Legislative Council, is but the fifth wheel to the coach. The case is rare in which the second chamber ventures to defeat a bill passed by the popular and elected House, this happening only shortly after the advent to power of a new administration of a different party from its predecessor.

If the Senate of the United States were to omit to defeat an administration measure now and then, "chaos (or is it cosmos?) were come again". In the case of a clash between the houses in Canada the Senate must necessarily give way in the long run to the popular House—not so in the United States where Senate and House alike are elected.

Perhaps the most striking difference in the two systems arises from the fact that your President is elected for a fixed term, as are your legislators. A President may be universally disliked and distrusted, but short of impeachment there is no way of re-

moving him—with us if the Prime Minister (who and not the Governor-General corresponds in fact, if not in theory, to your President) loses the confidence of the House of Commons he must resign. He may, indeed, if a new election be granted him, succeed in obtaining at such election a majority in the House of Commons: if so he is saved—but he must have the House at his back or step out and make room for another. So in the Provinces in like manner.

I shall now give a few examples to shew how in practice the written Constitutions in the United States have hampered the free action of legislation, with illustrations from our legislation.

The Federal Constitution provides that no State shall pass any law impairing the obligation of contracts—this provision has had far-reaching effects. A charter granted for a college, e. g., is considered a contract. For example, in 1769 the King, George III, granted to the Trustees of Dartmouth College in New Hampshire a charter of incorporation as a private charitable institution. After the Revolution—in 1816—the Legislature of the State of New Hampshire passed an act taking away from the trustees the government of this college and vesting it in the executive of the State—in other words changing the college from a private to a State institution. The act while continuing the trustees as a corporation as Trustees of Dartmouth University, purported to form a new body called a Board of Overseers, of whom the President of the Senate and the Speaker of the House of Representatives of New Hampshire, the Governor and Lieutenant-Governor of Vermont, were ex-officio members—and to this Board of Overseers was given the power of confirming or vetoing the acts of the trustees relating to the appointment and removal of president, professors, and permanent officers, the determination of their salaries, the establishment of professorships, the erection of new buildings, etc. The Legislature later on in the same year passed another act making it an offence for any one to act as president, professor, etc., except in conformity with the act just named. One Woodward had been Secretary-Treasurer of the corporation before the passing of the acts, but he apparently took sides with the Legislature (since he was removed by the Trustees of Dartmouth College before the last act) and he

was re-appointed by the Trustees of Dartmouth University organized under the new acts. The old board brought an action against him for taking possession of the books of their records. It will be seen that the simple question was: Had the new corporation of Trustees of Dartmouth University any power? And that depended upon whether the acts of the legislature were valid. The Supreme Court of New Hampshire decided that the Legislature had not exceeded its authority, and so dismissed the action: and an appeal was taken to the Supreme Court of the United States. The case for the old board was argued by the celebrated Daniel Webster and the Supreme Court decided that the charter was a contract. The Chief Justice, the well-known John Marshall, says "It can require no argument to prove that the circumstances of this case constitute a contract." Then the court proceeded to hold that this charter was a contract of the kind protected by the Constitution, and that the Legislature had no right to change it in any way.

In Upper Canada a Royal Charter was obtained from George IV in 1827 for the University of King's College at or near the town of York (now Toronto). It contained provisions that the Governor should be Chancellor, the Anglican Bishop of Quebec should be the Visitor and that the Archdeacon of York should be President by virtue of their offices, that all members of the Council should be members of the Church of England and Ireland, and that students in divinity must also take the same oaths as were required at Oxford. The Legislature of Upper Canada in 1837 took away the visitorship from the Bishop, the presidency from the Archdeacon and abolished all religious tests whatsoever.

That, however, was nothing to what was done twelve years later—in 1849 much of the charter was repealed and amended, the whole constitution was changed, the name became "The University of Toronto", the Chancellor elective, and he was not to be an ecclesiastic, a minister of any faith. The President was to be appointed by the Provincial Administration, the faculty of divinity was abolished, a Senate formed, and the property of the University vested in a new board. No doubt King's College was a small college and had those who loved her, but no

dramatic eloquence even of a Daniel Webster would have induced a Canadian court to hold that the Legislature had exceeded its powers in such legislation. And many such instances are to be found, for example in New Brunswick—"the University of New Brunswick"—in Nova Scotia, and elsewhere. So in the Dominion, but the present year, the relation of the Queen's University to the Presbyterian Church has been radically changed.

In the provision that no State may pass a law impairing the obligation of contracts, "contracts" is considered a very extensive and comprehensive term. When the State of Georgia had granted certain land, this grant was called a "contract" by the Supreme Court (*Fletcher v. Peck*, 6 Cranch 87, 136) and an act of the State Legislature annulling the grant upon the expressed ground of fraud was held to be unconstitutional. In Canada no one doubts that the decision would have been the other way. In 1897 and 1899 certain water rights were given on and near the Kaministiquia River to one J., these were in 1902 taken away from him and restored in 1904—all by the Province of Ontario.

After a State has agreed to grant lands to a company upon conditions, and the grantee has fulfilled the conditions of the grant and so earned the lands, it is not competent to pass further legislation that the lands shall not be conveyed to the company except upon a further condition: *De Groff v. St. Paul & C. R. R. Co.*, 23 Minn. 144. In Ontario, a certain company claimed to have fulfilled all the conditions necessary under the statute to entitle it to the grant of certain mineral rights. The Government disputed the right of the company: and made a sale of these rights to another company. An action was brought, but pending the action legislation was passed declaring the latter company entitled. The action came on for trial before myself and I declined to pass upon the question whether the requirements of the statute had been fulfilled by the original company, as I considered this quite immaterial. I held that even supposing the first-named company owned the land, the Legislature had the power to take it away and give it to another. This view of the law was approved by the Court of Appeal, and the Judicial Committee of the Privy Council. The following language was used:

"If it be that the plaintiffs acquired any rights . . . the Legislature had the power to take them away. The prohibition 'Thou shalt not steal' has no legal force upon the sovereign body": *Florence v. Cobalt* (1908), 18 O. L. R. 275. This decision made some commotion: and it was attacked by some who should have known better. They based their attack chiefly on the provisions of Magna Charta—not knowing or not appreciating that a British Legislature has the power to repeal even Magna Charta so far as it affects the territory subject to such Legislature—and, indeed, most of Magna Charta is repealed in Ontario: *Smith v. London* (1909), 20 O. L. R. at pp. 140, 141.

An agreement by a State Legislature to bind its own hands by a grant so as to preclude it from exercising its sovereignty in that regard in the future has been held by the Supreme Court to be valid in certain cases of taxation and exclusive privileges. Whether the police power can be thus alienated is a different and a difficult question. But in Canada, "the Legislature has no power to control by anticipation the actions of any future Legislature or of itself": *Smith v. London* (1909), 20 O. L. R. at p. 142.

I have already indicated the powers of a Canadian Legislature in respect of private property. It may be said broadly that a Provincial Parliament has the power to say that Blackacre, now the property of A, shall hereafter be the property of B—and so it will be—and that without the necessity of making compensation. The whole learning as to eminent domain is of no interest in Canada. The Legislature may, indeed, direct compensation to be paid; but that is in no sense necessary.

In many jurisdictions, e. g., New York, Michigan, Alabama, it has been considered that the State cannot authorize owners of mill-privileges to expropriate the land above to increase the head. In Ontario, we have long had such legislation, and no one has doubted its validity. Compensation is, indeed, directed to be paid: but that is not at all necessary for the validity of the statute.

A statute of New York authorized any person to take into his custody any animal trespassing upon his lands and give notice to the justice or a commissioner of highways of the town, who should proceed to sell the animal after posting notices. This was

held invalid in *Rockwell v. Nearn*, 35 N. Y. 307. In Ontario by R. S. O. c. 272, anyone may distrain a trespassing animal on his land. If this animal be a horse, cow, pig, etc., he may either take it to the public pound or retain it, giving notice to the clerk of the municipality. After certain notices the animal may be sold if not redeemed or replevined.

The State Legislature cannot authorize the compulsory extinguishment of ground rents on payment of a sum in gross: *Palairé's Appeal*, 67 Pa. St. 479. But in Prince Edward Island, lands which had been in the possession and ownership of "Proprietors" and their predecessors in title for many years were taken from them by the Act of 1874 upon payment into the Treasury by the Government of a lump sum, determined by commissioners. This, indeed, is not unlike "eminent domain", since the act is passed for "the contentment and happiness of the people", and there was "no reasonable hope of" the Proprietors "voluntarily selling their Township lands to the Government at moderate prices."

In Quebec from the first, the land was held in seigniority, the seignior (generally a noble) had under him the *censitaires* or tenants, "habitants" they called themselves: the habitant as "censitaire" (tenant—the words are not quite synonymous) was under many feudal obligations, familiar to readers of Blackstone—for example, he was bound to take his grain to be ground at the seignior's mill, and to pay for such grinding. If he went to another mill, that did not relieve him from paying his seignior all the same. And his punishment might be even more severe, for in one recorded judgment, a habitant who took grain to another mill than his seignior's was decreed to forfeit to the seignior not only the grain but also the vehicle in which it was carried. If a habitant, being the feudal inferior, desired to dispose of the land which he held, he was obliged to pay a substantial part of the purchase money to the seignior; and worse, the seignior might himself take the land within forty days of the sale. He was liable to the *corvée* or forced labor, for his seignior, as in France; he must give the seignior one fish out of every dozen of those caught in seigniorial waters; wood and stone might be taken from his land by the seignior to build or repair

manor-house, church or mill. Some few seigniors had also a seigniorial oven to which his censitaires were bound to take their bread to be baked.

In 1854 the then Province of Canada directed the value of all these rights to the seignior to be determined by commissioners appointed by the Governor, and upon their report being filed, and notice thereof published in the Official Gazette, the habitant was relieved of all duties, etc., except the fixed yearly rent, and thereafter held his land in *franc-aleu roturier*—at his option he might pay a lump sum once for all.

In this instance all the feudal duties were turned into a money payment—yearly indeed unless the tenant paid a lump sum. No one doubts that when the Legislature said that a lump sum might be paid instead of the *rente constituée*, it was perfectly valid legislation.

In the Imperial Act of 1869, by which the Irish Church was disestablished, there was a provision taking away all right of advowson or power of appointment to a church. Such right becomes effective only at certain—or rather uncertain—intervals—but the Parliament took it away entirely and directed the former owner if he applied for compensation within three years to be paid a lump sum fixed by commissioners: see *Frewen v. Frewen* (1875), L. R. 10 Ch. Ap. 610.

In the United States it is said the Legislature cannot validate an invalid trust or will: *Hilliard v. Paul*, 10 Pa. 81, 326, or give land absolutely to one who under the will received it under a restraint against alienation: *Spink v. Brown*, 61 Pa. St. 327; *Atter's Appeal*, 67 Pa. St. 341. In Ontario Mr. Goodhue left a perfectly valid will, the residuary estate to accumulate during the lifetime of his widow, and directed that if any of his children died during the lifetime of the widow, their children should take their parents' share. This did not suit the children of the decedent: they wanted their share at once and they executed a deed whereby each of them was to have his share at once—in other words they tried to take away the possibility which the will created in favour of grandchildren. The Legislature in 1871 declared the deed valid—and the court was forced to uphold the transaction: *Re Goodhue* (1872), 19 Gr. 366. The court did not

doubt the power of the Legislature to pass statutes wherein "from oversight or any other cause provisions should be inserted of an objectionable character, such as the deprivation of innocent parties of actual or possible interest by retroactive legislation."

Drainage of agricultural lands across the lands of others is a taking of private property for private use and in violation of the Fourteenth Amendment: *Re Tuthill*, 163 N. Y. 133, 49 L. R. A. 781. We have a whole series of acts allowing this very thing, and no Fourteenth Amendment stands in the way.

Not far removed from the right of property comes the right to bring an action. It is said that Congress has no power to protect parties assuming to act under the authority of the central government during the civil war by depriving persons who had been illegally arrested of all redress in the courts: *Griffin v. Wilcox*, 21 Ind. 370; *Johnson v. Jury*, 44 Ill. 142.

The Act of Congress providing "that any order of the President or under his authority, made at any time during the present rebellion, shall be a defence in all courts to any action or prosecution pending, or to commence for any search, seizure, arrest, or imprisonment, made, done or committed . . ." was, accordingly, held to be invalid.

In Canada we have had statutes of indemnity, e. g., in 1838, after the "Rebellion" an act was passed (1 Vic., c. 12) which recited that before and during the "insurrection" it became necessary for Justices of the Peace, officers of the militia and others in authority in the Province, and also for loyal subjects, to apprehend persons charged or suspected of joining in the insurrection. The act then provided that all proceedings brought for such acts should be void, and the persons who had committed them indemnified—all such proceedings were to be stayed, and if the plaintiffs went on they should be liable for double costs. No one had the slightest idea that this act was not perfectly valid.

So in Ireland, a similar act was passed after the Rebellion of 1798; and also in Cape Colony in 1836, 1847, and 1853; in Ceylon in 1848; in St. Vincent in 1862 and in New Zealand in 1865 and 1867. And in Jamaica after the Rebellion of 1865, the Legislature passed an act of indemnity which had the effect of preventing the prosecution of actions against Governor Eyre.

It is, indeed, said that the people of a State, by amendment of their Constitution, may validly take away rights of action and other rights not thereby imposing a punishment or impairing the obligation of a contract. This was done by the State of Missouri and others; all rights of action for anything done during the war by Federal or State troops were taken away: *Dupman v. Shetel*, 41 Mo. 184; 8 Wall. 645.

Some of the differences between the two countries depend upon a principle to which the courts in the United States pay much respect—the principle of equal rights. One judge exclaims “Can it be supposed for a moment that if the Legislature should pass a general law and add a section by way of proviso that it should never be construed to have any operation or effect upon the . . . rights, etc., of A. L. or J. G., such a provision would receive the sanction or even the countenance of a court of law?” *Lewis v. Webb*, 3 Mo. 326.

The Dominion Act of 1903, 3 Edw. VII, c. 21, gives jurisdiction to the Exchequer Court of Canada to order the sale of any railway at the instance of the Minister of Railways, or any creditor, appoint a receiver, etc., but “Sec. 8 of this Act shall not apply to or authorize proceedings against the C. O. Railway . . . ”

While in cases of succession duties an arbitrary statutory exemption is sustainable: *State v. Furnell*, 39 L. R. A. 170, if such an arbitrary exemption is applied only to estates lower in value while those which are larger have no exemption at all, this is void and invalidates the whole statute: *State v. Ferris*, 53 Ohio St. 34: 30 L. R. A. 218—but this seems to be doubted in other courts: *Tennessee and Massachusetts*, 26 L. R. A. 259; 28 L. R. A. 178. In Ontario, all estates under ten thousand dollars are absolutely exempt—as are all passing to certain relatives under one hundred thousand dollars—and the larger ones have no exemption.

A statute of a State providing for service upon the agent of a non-resident doing business in the State has been held to be void: *Cabanne v. Graf*, 92 N. W. 461. In Ontario, every non-provincial company before procuring a license must have an agent within Ontario upon whom service may be made: and every person who within Ontario transacts or carries on any of the business or any

business for any corporation whose chief place of business is without Ontario, shall for the purpose of being served "with writ of summons" be deemed the agent thereof: Con. Rule 159 (b).

A statute attempting to restrict the right of banking to corporations is bad: *State v. Scangal*, 15 L. R. A. 474: 44 Am. St. 756, although apparently the restriction is good if the business be insurance, at least in Pennsylvania: *Commonwealth v. Vrooman*, 164 Pa. 306; 25 L. R. A. 250. By the Dominion Act, R. S. C. (1906) c. 29, Secs. 156, 157, it is provided that every one who uses or assumes the title of "bank", "banking company", "banking house", "banking association", or "banking institution" without being authorized to do so is guilty of an offence rendering him liable to a fine of one thousand dollars, or imprisonment for five years, or both. And only incorporated companies are eligible for authorization.

In the United States, it seems that an act requiring persons paying less than twenty-five dollars in taxes to pay a license fee will be held bad: *State v. Mitchell*, 53 Atl. 887. And a regulation limiting to transients only requirement of a license is equally obnoxious to equality: *McGrand v. Marion*, 98 Ky. 673: *Kinsely v. Cotterel*, 196 Pa. St. 614. But such regulations are of daily occurrence in Canada.

An act providing for raising money to pay bounties to private producers of beet sugar is invalid: *Michigan Sugar Co. v. Auditor General*, 124 Mich. 674. We until this year paid bounties to private producers of steel, pig-iron, etc.—and bounties to private producers of beet sugar are not unknown.

No city, it is said, can be allowed to raise taxes with which to aid manufacturing establishments: *Parkersburg v. Brown*, 106 U. S. 687: *Cole v. La Grange*, 113 U. S. 1. We do it every day and in most, if not all, of the cities and in many of the towns and even villages of Ontario.

In the United States it is decided that taxes must be for a public purpose and while the support of a State University is a public purpose, the creation of free scholarships and allowances to needy students is not, even though these should be granted after public and competitive examination: *State v. Switzer*, 143 Md. 287. We would have no difficulty in such a case.

In Illinois and New Hampshire it seems that owners of property cannot be compelled to keep the sidewalk opposite their property clear of snow: *Gridley v. Bloomington*, 88 Ill. 554; *State v. Jackman*, 69 N. H. 318; 44 Pa. 438. But in Toronto many a citizen has found his way to the police court because he has neglected to obey an ordinance to that effect.

A railroad apparently cannot, with you, be made liable for stock killed by it in the absence of negligence on its part. *Jenson v. Union Pac. R. Co.*, 21 Pac. Rep. 994. By our Railway Act, sec. 294 (4), when any stock at large, whether upon the highway or not, gets upon the property of the railway and is killed or injured by a train, the railway must pay unless they prove that the stock got at large through the negligence of the owner. And sec. 298 provides that the company must pay for damage to crops, etc., caused by fire, negligence or no negligence. Not wholly dissimilar legislation has been passed in several States, and apparently held good. *Fraser v. Pere Marquette* (1906), 18 O. L. R. 589. And also in the case of passengers and goods. *Chicago, &c., v. Qernocke*, 82 N. W. 26.

Some differences depend upon the hypothesis that the Legislature is an agent, *delegatus*: and of course, Bentham or no Bentham, *delegatus non potest delegare*. For example, a State Legislature cannot authorize a board of health to make general rules: *State v. Burdge*, 95 Wis. 390. Nor can it leave to an official finally to determine what shall be done to make factories and workshops sanitary: *Schaezlein v. Cahaniss*, 135 Cal. 466, or the extent of expropriation for waterworks; *Stearns v. Barre*, 73 Vt. 281.

In the Canadian "constitution", Parliament and Legislatures are not considered "*delegatus*" at all. Not even delegates of the Imperial Parliament at Westminster, from whose statute the Canadian Legislative bodies derive their powers—the highest court in the Empire has said "They are in no sense delegates of or acting under any mandate from the Imperial Parliament . . . the Provincial Legislature having . . . the authority to impose imprisonment with or without hard labour, had also power to delegate similar authority to the body which it created called the License Commissioners. . . ." *Hodge v.*

The Queen, 1883, 9 A. C. at pp. 132, 133, 134. "It was argued at the bar that a Legislature committing important regulations to agents and delegates, effaces itself. That is not so. It retains its powers intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter into its own hands. How far it shall seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature and not for courts of law to determine", *ibid*, p. 132. In fact it may be said generally that anything a Legislature can do itself, it can depute to another subordinate body to do. I consequently do not give particular instances or further pursue this subject.

Where courts have given an interpretation to the words of a statute, it is not open to the Legislature to put another construction upon these words so as to have a retroactive effect: *Greenough v. Greenough*, 11 Pa. St. 489. No such limitation of the power of Parliament or Legislature is thought of in Canada. Moreover there are many statutes (e. g., in insurance) which are expressly made applicable not only to future but also to existing contracts.

The Legislatures in the United States cannot validly provide that cases pending in the Court under an existing law shall be dismissed: *State v. Adams*, 44 Mo. 570. In 1909 the Legislature of the Province of Ontario passed a statute, 9 Edw. VII, c. 19, which by sec. 8 provided that every action theretofore brought wherein the validity of a certain contract or any by-law passed or purporting to be passed, authorizing its execution by a municipal corporation, was attacked should be "forever stayed." One of such actions came on for trial before me—the evidence had been taken before the passing of the act but decision not yet given when the act was passed. I said (*Smith v. London* (1909), 20 O. L. R. at p. 142) "This action it is plain comes within the letter as well as the spirit of this sec. 8. The Legislature has said that this action shall be stayed. My duty is 'loyally to obey the order of the Legislature,' the action is accordingly stayed.

"While the wording of the statute is that the action shall be 'forever stayed', the Legislature has no power to control by anticipation the actions of any future Legislature or of itself; it

may be that this legislation may be repealed the result is that the stay ordered by the statute has the effect of causing the court to retain the action with no proceedings to be taken therein unless and until the legislation is in some way got rid of."

This decision was affirmed on appeal, an appeal hopeless from the very first.

We may go even further and say with perfect confidence that a Provincial Legislature may, in matters of private rights, oust the court altogether and make it a mere *roi faineant* in that regard.

"It is not in my judgment doubtful that the Legislature of the Province has the power to say that any question respecting property or civil rights shall be decided in any way the Legislature shall see fit that the Legislature has supreme power within the limits of subjects allotted to it to pass such legislation as it sees fit and such legislation must be given effect to by this and every other court. And if the Legislature has in fact said that the true boundary between the two adjoining lots is to be determined by three farmers or by a land surveyor, it is my duty loyally to obey the Legislature and to stay my hand: the Legislature has the legal power—and that is all I may concern myself about—to say that His Majesty's Court shall not determine the property rights of His Majesty's subjects but that such are to be determined by some other tribunal or by some person named." *Delamatter v. Brown* (1908), 13 O. W. R. 58, at pp. 62, 63.

In the case of *Smith v. London* it was held that the Legislature might declare a contract valid which theretofore had been invalid. And this method is frequently resorted to. A municipality has passed by-laws granting a bonus to a railroad or other enterprise, perhaps issued bonds for the amount of the bonus: some question arises as to the legality of by-law or bond issue. An act is procured from the Legislature, and thereafter no one can set up illegality in what the Legislature have declared legal.

The boy said "What mother says is so, if it isn't so". We say "What the Legislature say is legal, is legal if it isn't legal."

An order to State officers not to engage in politics and not to

make public speeches is void. *Lonthan v. Conn.*, 79 Va. 196. Our Canadian practice is to continue a man in public office for life, but if he engages in politics or makes public speeches, he is dismissed, at least when the other party come into power—and no one doubts that such an order as has been held void in the United States is perfectly valid with us.

Then as to the Dominion and Provincial Courts. The construction put upon the statutes of a State by the State courts is generally followed by the Supreme Court of the United States. The Supreme Court of Canada does not consider itself at all bound by the Provincial Courts. In a case tried by myself in which I gave judgment for the plaintiff, the whole question was one of the interpretation of an Ontario statute—the Court of Appeal for Ontario sustained my judgment. In the Supreme Court, the two judges who had come from Ontario agreed in that interpretation, but three judges—one from Quebec, one from Prince Edward Island and one from British Columbia—took another view, and the appeal was allowed. The Judicial Committee, indeed, restored the original judgment: *Thompson v. Equity Ins. Co.* (1910), A. C. 592; (1909), 41 Can. S. C. R. 491.

But I think I have given sufficient instances now to illustrate the radical difference in many respects of the two Constitutions.

I. In the United States the President and the Governors of the States (speaking generally) have as much power as George III, and in some respects more—the Governor-General and the Lieutenant-Governors, less than George V.

II. Times and seasons are set in the United States for change of legislation, none in Canada.

III. The Government of the United States can claim no powers which are not granted by the Constitution—it is a government of enumerated powers: the Dominion of Canada has all the powers not granted to the Provinces.

IV. The Constitution of the United States contains a hard and fast standard set by people of one generation for their successors: that of Canada may be changed in a day: *Littera scripta manet*.

V. In the United States

The Moving Finger writes, and, having writ
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a line,
Nor all your tears wash out a word of it.

(Perhaps you would prefer the Latin version—here it is

*It digitus, cerae scribuntur, scriptaque durat
littera: tu sapiens sis licet atque pius
"dimidium dele" frustra obtestabere "versum",
non fiet lacrimis ulla litura tuis.)*

No interpretation by the courts of the meaning of the words of the statutes, can the Legislature correct: no contract created by legislation, however unwise, can be cancelled: no grant, however improvident, can be recalled: no action based upon existing law can be stayed or dismissed: no gain, however ill-gotten, can be taken away from one who obtained it by legal means however scaly: no college can be brought under such governance as the whole State may desire and perhaps need, if it can appeal to some old charter or grant.

In the United States the courts are supreme: in Canada, the people through their representatives—in the one country a few men say to the legislating bodies, "Thus far shall thou go and no further", in the other the legislating bodies say to the courts, "Thus far and thus shalt thou go and no further or otherwise."

In the United States, half a dozen men sitting up in a little cock-loft can paralyze the activity of a Senate and House—may say that a measure imperatively called for in the public interests cannot be validly enacted; and the legislators, the people, are helpless—that is called Republicanism, democratic government; and there is searching of soul and shaking of heads, if not gnashing of teeth, when anyone suggests that the people be asked if that little coterie have correctly interpreted the popular will formerly and formally expressed in a State Constitution. In Canada should the court fail to apprehend the real intention of an enactment, any government which can command the support of the people can correct the error.

Paley, when speaking of a view held by some of the Constitu-

tion of England, says "These points are wont to be approached with a kind of awe: they are represented to the mind as principles of the constitution, settled by our ancestors, and being settled to be no more committed to innovation or debate, as foundations never to be stirred, as the terms and conditions of the social compact to which every citizen of the State has engaged his fidelity by virtue of a promise which he cannot now recall." Is not that the point of view, the feeling of the American? Paley adds "Such reasons have no place in our system."

The framers of the Constitution of the United States have used every endeavor to ward off what they consider the worst of all governments, an unbalanced democracy which is supposed to be necessarily pregnant with a democratical tyranny (I use the words of Erskine) thinking (to use the words of Locke) "that the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humour of the people, is to expose it to certain ruin." It is in the power of the people to change the constitution indeed, but not at once—and the "sober second thought" is what is so often spoken of and appealed to. Is it always certain that the first thought is wrong: and the second thought right?

With Burke I say "If you ask me what a free government is, I answer, That it is what the people think so, and that they and not I are the natural, lawful and competent judges of this matter." And so I leave it.

No doubt the citizens of this Republic will say—what a barbarous country is Canada! the courts are not secure in their jurisdiction, the interpretation put upon statutes by the court may be reversed by the Legislature, any man may be deprived of his property without due course of law—why even a legislator after he has been elected does not know how long he may continue such. Surely property must be insecure, enterprise and industry at a discount, the courts an object of contempt, the Government an object of awe not unmingled with terror!! What a country for a white man to live in!

So a Canadian who did not happen to know better might exclaim, Why, what's the use of a Senate and House of Representatives or House of Assembly, when their hands are tied by the

letter which killeth, when they cannot even "boss" a court? What kind of a country is it where no matter how offensive and discreditable a government may be you cannot get rid of it till a time fixed beyond control? What a paper-governed, court-ridden country!!

And yet, have we not here an illustration of the saying "It is not so much the form of a constitution as the spirit in which government is carried on, not so much the law as the men who administer it, which count"?

In your land as in mine the government and legislators respond pretty well to public sentiment—a little more quickly, a little more slowly—both lands get the government they deserve. At odd times the courts will with you check for a while useful legislation, but it gets enacted at last some way or another. A lawyer trained in the interpretation of constitutions—the "Philadelphia lawyer" of proverbial note—can see much difference between "tweedledum and tweedledee".

A hair perchance divides the false and true.

Yes: and a single Alif is the clue—

They're sure to find it—to distinction clear

And peradventure to reversal too,

as Omar does *not* say. And a method can always be found without giving the court or the Constitution too cruel a jolt for giving the people what they really demand and insist upon.

In Canada nobody is at all afraid that his property will be taken from him; it never is, in the ordinary case. Our people are honest as peoples go, and would not for a moment support a government which did actually steal—a new government would be voted into power and the wrong righted. We will not submit to have our great public works delayed by cranks or the litigious, but even a crank or litigious person must be paid a full price for his property—our courts I venture to think are as much respected—(excluding myself) are as worthy of respect—as those of any country in the world; many of our best men, men of high type, seek election to the House of Commons and the Legislatures—and if any government in the United States could be treated to more railing accusations and with more contempt than Canadian governments are by their political opponents, I

should marvel at it. An American feels himself at home at once in Canada, a Canadian crossing the border does not feel that he is entering a foreign or a strange land—neither can notice any difference in the law any more than in the language or in the habits of the people. Once he escapes the custom-house either feels himself a native—unless he is a fool either by nature or through misplaced or spurious patriotism.

Indeed, we are in all but the accident of political allegiance, one people. True the Union Jack and Old Glory have the colours red, white, and blue differently arranged—but they are the same red, white, and blue.

Of precious blood its red is dyed
The white is honour's sign
Through weal or ruth its blue is truth,
Its might the power divine.

As we are of the same blood, our aims are the same, justice to all under the law, good will to all men, peace and righteousness. With these aims in common we are working and shall work out our destiny side by side and in much the same way, an example and a blessing to humanity.

MR. J. L. CARNEY: Mr. President: Because of the circumstances referred to by you, sir, in the introduction of the speaker who has just closed his address, it is with peculiar pleasure that I rise to move that the thanks of this Association be tendered to Mr. Justice Riddell for the highly instructive and able address to which we have just listened, and in connection therewith I move that he be elected an honorary member of the Iowa State Bar Association.

This motion was duly seconded by a standing and unanimous vote.

THE PRESIDENT: I have the honor of informing you, Mr. Justice Riddell, that you are a member of the Iowa State Bar Association.

MR. JUSTICE RIDDELL: Mr. President and brethren of the Iowa State Bar Association: I thank you heartily. I hope this will not be the last opportunity I have in meeting my friends and brethren of the legal profession.

FRIDAY AFTERNOON SESSION

1:30 O'CLOCK

THE PRESIDENT: The Auditing Committee is ready to report and we will hear that report now.

REPORT OF AUDITING COMMITTEE

Mr. President: We, your committee appointed for the purpose of auditing the accounts of the Treasurer of this Association beg leave to report:

That we have examined the accounts of your Treasurer, showing moneys received and expended, and find the same correct as reported to this Association by the Treasurer in his report.

JOHN T. CLARKSON, *Chairman.*

Upon motion duly made the report was received and placed on file.

THE PRESIDENT: The Chair will appoint as Delegates to the American Bar Association: Judge Scott M. Ladd, Des Moines; Prof. H. C. Horack, Iowa City; Judge E. M. Carr, Manchester.

The meeting will be held on the 27th, 28th, and 29th of August, at Milwaukee, Wisconsin, and the Secretary will notify the parties and see that the necessary credentials are forwarded.

THE PRESIDENT: The next thing in order will be the report of the Nominating Committee, Mr. James O. Crosby, chairman.

REPORT OF NOMINATING COMMITTEE

Your Committee on Nominations respectfully reports: For President, H. E. Deemer, Red Oak; for Vice President, John F. Lacey, Oskaloosa; for Secretary, H. C. Horack, Iowa City; for Treasurer, Frank T. Nash, Oskaloosa; for Librarian, A. J. Small, Des Moines.

Respectfully submitted,

JAMES O. CROSBY, *Chairman.*

On motion duly made and seconded the report was adopted.

On motion duly made by Mr. R. M. Haines, the rules were suspended and the Secretary authorized to cast the unanimous ballot of the Association for the persons named in the report for the respective offices, which was accordingly done.

THE PRESIDENT: We will next hear the report of the Committee on Resolutions, Mr. I. N. Flickinger, chairman.

REPORT OF COMMITTEE ON RESOLUTIONS

Your Committee on Resolutions report and recommend the following for the consideration of the Association:—

1. Resolved that a vote of thanks be extended to the Honorable William Renwick Riddell of Toronto, Canada, Justice of the King's Bench Division of the High Court of Justice for Ontario, for his attendance on the meeting of the Iowa Bar Association and for the entertainment and instruction afforded by his annual address and greetings at the banquet table.

That the Iowa Bar Association by its members here assembled sends greetings to the Canadian Bar with the wish that the cordial relations now existing between these great Nations shall forever continue.

2. Be it further resolved that the thanks of this Association be extended to the Honorable H. S. Hadley, Governor of Missouri, for his presence at the banquet table and his inspiring and manly words of friendship and greeting from our sister State.

3. Be it further resolved that a vote of thanks be extended by this Association to the local Bar of Linn County, the Commercial and Country Clubs of the city of Cedar Rapids, as well as to its good citizens for the kind and courteous treatment and entertainment accorded the members of this Association while guests of the city.

4. Resolved that a vote of thanks generally be extended to the various parties who have read papers and responded to toasts during the meetings and at the banquet of the Association, both by reason of the instruction and the entertainment afforded thereby.

Respectfully submitted,

I. N. FLICKINGER,
LAWRENCE DEGRAFF,
C. H. VAN LAW.

THE PRESIDENT: The Chair at this time desires to express his appreciation of the very able manner in which we have been entertained by the Bar of Cedar Rapids. Chairman Trewin and his successor, Mr. Chas. R. Sutherland, have been faithful in season and out of season, and matters have been so thoroughly and carefully arranged that no single complaint has been made so far as known to the Chair.

At this time I also desire to publicly express my appreciation of the services rendered by Prof. H. C. Horack, the Secretary of the Association. His duties have been arduous and he has performed them ably and well, and I express to him thus publicly my appreciation and thanks for these services.

I now recognize the Secretary, who will read the report of the Executive Committee.

REPORT OF THE EXECUTIVE COMMITTEE

Your committee begs leave to report:

Upon the invitation of the Sioux City Bar the place for holding the next meeting has been fixed at Sioux City. The date of meeting will be the last Thursday and Friday in June, i. e., June 26 and 27, 1913.

It was further moved and carried that the appointment of all committees be delegated to the new President, and that he should make appointments at such times as he should see fit.

Upon motion duly made, the report was received and placed on file.

The committee appointments, as later announced by President-elect Justice H. E. Deemer, were as follows:

COMMITTEES OF THE IOWA STATE BAR ASSOCIATION FOR 1912-13

Legal Education and Admission to the Bar: Scott M. Ladd, Sheldon; Ralph Otto, Iowa City; Louis Block, Davenport; F. W. Sargent, Sioux City; C. A. Dudley, Des Moines.

Legal Biography and History: J. B. Weaver, Jr., Des Moines; W. R. Lewis, Montezuma; C. J. Wilson, Washington.

Law Reform: E. B. Evans, Des Moines; J. J. Clark, Mason City; C. H. Van Law, Marshalltown; W. E. Johnston, Ida Grove;

A. N. Hobson, West Union; F. F. Dawley, Cedar Rapids; Robert Healy, Fort Dodge.

Membership: A. H. Hollingsworth, Keokuk, 1st District; W. M. Davis, Iowa City, 2nd District; E. H. McCoy, Waterloo, 3rd District; A. L. Rule, Mason City, 4th District; C. E. Walters, Toledo, 5th District; T. J. Bray, Grinnell, 6th District; Clifford Cox, Des Moines, 7th District; V. R. McGinnis, Leon, 8th District; Henry Peterson, Council Bluffs, 9th District; Thomas McCarty, Emmetsburg, 10th District; O. D. Nickle, Sioux City, 11th District, *Chairman*.

Grievances: E. C. Roach, Rock Rapids; F. F. Faville, Storm Lake; D. F. Stockman, Sigourney; E. M. Carr, Manchester; W. B. Quarton, Algona.

Programme: H. E. Deemer, Red Oak; R. M. Haines, Des Moines; M. J. Wade, Iowa City.

Uniform Laws: N. D. Ely, Davenport; J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Chas. S. Bradshaw, Des Moines; Glen Brown, Dubuque.

Section on Taxation: J. H. McConlogue, Mason City; Chas. A. Clark, Cedar Rapids; John T. Clarkson, Albia; J. C. Mabry, Centerville; Wesley Martin, Webster City; Frank O'Connor, New Hampton.

Constitution and By-Laws: A. T. Cooper, Cedar Rapids; R. M. Haines, Des Moines; J. A. Devitt, Oskaloosa.

THE PRESIDENT: If there is nothing farther, we will resume the consideration of the report of the Committee on Law Reform.

CHAIRMAN EVANS: We have for consideration the third recommendation of the Committee, and I move its adoption.

Duly seconded.

MR. JAMES O. CROSBY: This is the third time that this committee has brought forward this recommendation. I have made two speeches against it, and what bothers me now is to know whether I should repeat those two speeches. I do not know how many times I shall be called upon to oppose this recommendation. There ought to be an end to it some time, so I guess I will make a speech.

This recommendation seeks to empower the trial court to limit the argument in jury cases, that is, to increase the powers of the District Judges. Is it possible that the members of the bar are losing their discretion, and that the court shall monopolize this matter? Patrick Henry said: "Give me liberty or give me death." It is curtailing our liberties as trial lawyers. It is necessary, perhaps, to inquire about this matter of discretion. The judges of the District Court are there from their own seeking. They are supposed to have the common discretion of the trial lawyers before they seek to be elevated to the bench. Suppose they succeed in getting the nomination, the mere fact of getting the nomination does not increase their discretion. If they are nominated, that does not withdraw the discretion from the members of the bar. Now, suppose they are elected, and the laity and members of the bar help to elect them; that act of election does not increase their discretion, nor does it detract from the discretion of the lawyers who voted to elevate them to the bench. Is there some manipulation, some system by which this passage to the bench adds to the discretion of those that are elected? From what source did they draw it?

Now, gentlemen, in the District Court things go pretty much as the judge says. When he addresses the jury he can use his own discretion as to the length of time he takes. I can't see where there is any change in discretion between the members of the bar that do not get elevated to the bench and those who do. Where did this originate? It certainly didn't originate among the lawyers, for they do not like to relinquish their powers. It seems this must have originated from the District Judges, and it certainly doesn't show much discretion on their part. I guess this is enough for this time.

MR. PARRISH: I did not intend to take part in any more discussions, but I cannot forego the opportunity of for once taking sides with the Committee on Law Reform. It is true, I think, that the discretion which is lodged in the members of the bar in respect to the time they may use in the argument of jury cases, is not very often abused. But it is sometimes and in some places. It has not been a great while ago that I went to try a case in one of the southern counties of this State, and took along with me

fifteen or twenty witnesses. The other fellow had as many. We arrived on the scene and then waited two days and one night session, while some lawyers argued a case to the jury which involved the ownership of one roan steer, and in that particular county I have had to sit around a couple of days a good many times waiting while some case was argued to the jury.

I think the District Judges ought to have some discretion in the matter of limiting arguments. I do not think it ought to be entirely within the discretion of the District Judges. In some States, I know, they cut down the arguments to such a point that there is no use to talk to a jury.

I am in favor of the adoption of the resolution. Whether the limit shall be the time fixed in the resolution may be a question, but certainly a court and the other members of the bar and litigants ought not to be compelled to sit around the court room two or three days listening to speeches in a twenty-five dollar law suit.

JUDGE E. M. CARR: There is this objection, in my judgment, to limiting the length of time a lawyer shall use in making an argument to a jury: During a practice extending over forty years, I have made many and many an agreement with counsel upon the other side to limit our arguments, and I think in fully one-half of these cases, the lawyer on the opposite side has come to me after the argument was finished and said: "I never have made an agreement of that kind where I could feel that I had done myself justice; I felt all the time as though there was a rope around my neck; I didn't do justice to my client or myself." I do not believe that the limiting of arguments to the jury would be in furtherance or promotion of justice in the trial of a case to a jury.

A vote was taken upon the adoption of this third recommendation and stood twenty-five to twenty-five, and the motion to adopt was declared lost.

CHAIRMAN EVANS: I feel somewhat encouraged; we are making progress. As to the next and fourth section, the committee has withdrawn from it that portion which relates to criminal cases, so that it now reads:

That the legislature should adopt the necessary amendment to the present laws to provide for a verdict agreed to by nine jurors in all civil cases; such verdict, however, not to be accepted by the court until the jury have deliberated for a period of not less than ten hours.

I move the adoption of that recommendation.

Duly seconded.

SENATOR C. H. VAN LAW: As noted by a little memorandum to the printed report, I did not concur fully in the recommendation of the committee, but would restrict the application of the rule to cases only where there is a limited amount, my thought being in that connection, that in cases of minor importance a verdict by nine jurors after a deliberation of ten hours, would relieve us of a great many disagreements in cases tried in our courts, since in these cases the thing to be accomplished is a settlement of the fact in controversy, and would rid our courts of the extra expense which may arise by reason of disagreement or otherwise.

MR. E. C. JOHNSON: I do not know that I ought to say anything upon this subject, in view of the fact that I am a mere "rookie" to the organization, and a "rookie" as a rule is put through the awkward squad before he can do anything.

I am unalterably opposed to the adoption of such a rule as is now proposed by the committee. One of the cogent reasons for that is this: I might preface my remarks by saying, if there ever was a reason why that rule should be adopted, it has passed away, and for the reason that the ways and means for drawing jurors in this State have been so changed, that our juries are not as strong as they used to be. The names of everybody now—Tom, Dick, and Harry are thrown indiscriminately in the box. From that our jury lists are drawn. It is not an uncommon thing in drawing an entire jury that if you get one good level-headed juror, you are lucky.

I do not believe and never will believe but what the judgment of one good, hard, sound-headed man is worth more than eleven whose heads don't weigh an ounce. We are in that predicament now. I leave it to the practical lawyers in this body, and I believe you have all seen that your juries are not as strong a class

of men as they were when only a few men from each community were sent up for the jury list to be drawn. You get them bad and indifferent now. I venture the assertion that anybody who investigates it, will come to the conclusion that our juries are not as strong as they used to be. There is not the likelihood of going wrong where you have twelve men to pass upon the facts as where you have nine. Unanimity is always desirable. I saw one of the lawyers in this room yesterday who tried two cases and in both cases the juries disagreed, and in both cases the disagreement was eleven to one. They tried those cases over afterwards, and believe me, gentlemen, the one man in each case was right, as determined by the subsequent decision of the jury, and by the combined consensus of opinion of the people. I could stand here and talk to you as one who would have been benefited by that rule. I had an experience in which that thing would have been to me a power. I have been disappointed in that respect, but I do not believe I ought to let that affect my personal judgment. There are three things in this country that rise above all other—life, liberty, and property. If it is not a good thing where life and liberty is involved, it is not a good thing where property is involved.

JUDGE CARR: I only want to say a word. I think we have had this before us a number of times. I remember opposing it once before in a bar meeting of this Association. I opposed it then and I do now for the reason that juries have been favored by the English speaking people for hundreds of years. That is not the case under the civil law, where they have them for special purposes. We have them for general purposes.

It is the duty of juries to try to agree, and here is why I object to this recommendation: because it is an attack upon the whole theory of our jury system. Suppose it is a question of damages and there are three jurors in favor of the full amount claimed by the plaintiff; three do not believe there should be any finding of damages at all; and the other six are lined up all the way between no verdict at all and ten thousand dollars. Now, if the old theory, the theory upon which juries should work, prevails, that jury, to agree, must compromise. But if you stop

here with an arbitrary rule and say one extreme is cut out entirely, three men, if they are thrown out of the case entirely, and the other three men believing in a ten thousand dollar verdict remain, the compromise verdict is not a composite verdict of the twelve, but of the nine. There is no respect paid for that verdict, and should not be. The plaintiff who is seeking damages has the advantage under these conditions of one thousand to fifteen hundred dollars.

The respect which English speaking people have had for juries for one thousand years would be attacked by the verdicts that would be rendered which would not represent twelve men. It is a fundamental attack upon the jury system, and from that standpoint and for that reason I oppose it.

JUDGE R. M. WRIGHT: My experience and observation teaches me that there are three reasons that appear to me to be all-sufficient in favor of a unanimous verdict on the part of twelve men. The first reason is, that the majority system of verdicts was tried by the English speaking people for about one hundred and fifty years and it was found to be a failure, and a failure, because I think, of the reason which inheres in the second reason that I have for opposing any such proposition.

The second reason is this: A verdict by twelve men carries with it a weight and a force in the community that can never be carried by a verdict of nine, and that is a matter that is well worth considering.

The third reason is this: When a jury of twelve men have come to a unanimous verdict, the party that is defeated thinks twice, and sometimes three or four times, before appealing to the Supreme Court.

Now, it is an old maxim that it is to the interest of the State that there should be an end to litigation, and if that be true, it certainly is true that a majority verdict would produce far more appeals to the Supreme Court than a unanimous verdict. For these three reasons I oppose the recommendation of the committee.

MR. C. M. BROWN: I have been in this Association when the same question was discussed several years ago. I was in favor

of this proposition then, and I am in favor of it now. We have upon our supreme bench six men; other courts have nine or different numbers to decide questions of fact. How often do they decide them by a divided court? Yet we acquiesce in those decisions and say they are right.

My friend upon the right says juries are not as good as they were in the past. I want to disagree with that proposition. I believe the men who serve upon the juries to-day are far more intelligent than they were thirty or forty years ago. He says, one man may control that jury. Then whose verdict is it? It is the verdict of one man. Why should we say that we are going to force twelve men to a certain conclusion upon a matter of damages between two individuals or between an individual and a corporation, when we accept a verdict of the judges on the same question? I believe that the very fact that a majority of nine men would determine a verdict would tend to lessen litigation, and we would be able to carry on our courts just as well and better than we are doing it to-day.

I cannot agree with Judge Wright or Judge Carr. I believe our courts would be better and litigation would be far less expensive if we were to give to the jury the right to decide by a majority verdict what the amount of damages should be. A verdict of a jury as to damages is simply a matter of opinion. I believe, Mr. President, we would be making a decided advance if we were to adopt this resolution as to a majority verdict.

SENATOR C. H. VAN LAW: I want to submit an amendment in accordance with my position in reference to the matter, by following the words "in all civil cases" with this: "where the amount in controversy does not exceed five hundred dollars".

I move the adoption of the amendment to that proposition.

THE PRESIDENT: If there is no objection the amendment is accepted.

MR. CHAS. PERGLER: I am a new member. Under ordinary circumstances I would not presume to speak on a matter of this kind. What I want to suggest and point out is this: Majority verdicts are in vogue in a number of European countries. Those countries for years have been crying and asking their govern-

ments to adopt the American and English system. In some of those countries they have got it to a certain extent. But, gentlemen, let me tell you this: They made a fundamental mistake in allowing in most instances merely majority verdicts. What is the result? In Austria the verdict of a jury has practically no weight, is accorded no credit, and the jury system has no standing. I have not the statistics just now. I think I could prove by taking case after case of European reports and show to you that the jury system is not accorded the respect it is accorded here, simply because the majority rule prevails. Now, I think this is an actual experience that ought to be a warning to us. I am in full accord with those who say that the majority system of verdicts is an attack on the foundation of the jury system itself.

SENATOR TREWIN: It seems to me the proposed legislation is directed against an imaginary evil. As a matter of fact, I think the consensus of opinion among the members of this Association is that there are very few mistrials by reason of disagreements of juries. In my experience, I never tried but I think one really important case where the jury disagreed—eleven to one. On the subsequent trial the one was found to be right. On the first trial, influenced by a strong mind and prejudice, eleven voted one way, and a well-balanced man voted the other way. The object of having trials at all is to secure justice. Justice can only be obtained by the elimination of prejudice, and there is less prejudice manifest in a unanimous verdict than there would be in a majority verdict of the jury or by a three-fourths vote.

There isn't any reason for asking the General Assembly to adopt a rule of this kind in this State. We have been getting along very well and justice has not been interfered with, generally speaking, by the obtuseness or standing out of one or two men on a jury. It lends great force, as was said by the gentleman who just spoke, to the verdict of a jury, when litigants know that in order to arrive at a result, they must have a unanimous opinion of twelve men; and jurors have come to see those things and they yield and work together with the object of arriving at the very right of the matter.

THE SECRETARY: I have a letter here from W. L. Cooper of Burlington, in which he refers to the recommendation now under consideration. The portion of the letter relating to the report of the Committee on Law Reform is as follows:

I sincerely hope that the recommendations numbers one and four will not be adopted. Number one has been turned down several times but like Banquo's ghost "it will not down".

The fourth recommendation is equally objectionable. I never for a moment would consent to any but an unanimous verdict of a jury. If they had recommended *abolishing the jury* in civil cases I would probably prefer it.

CHAIRMAN EVANS: As far as the chairman is concerned, he has no special feeling or interest in the result of this vote. I do want to suggest, however, in view of the argument that has been presented against the committee's report, and in view of the record we have made in the past, that the Committee on Law Reform might as well be abolished if it is good argument against a report which it may present that some other meeting of the Association has considered the same proposition.

I recognize, as a general rule, that we should go slow and hesitate a long while before we set aside a precedent or procedure that has been followed for a number of years, especially with reference to legal procedure, and that an association of this kind ought not to be quick in changing rules of procedure that have been in vogue for a long time. But it occurs to me, we ought to recognize also that we are here deliberating upon questions, not particularly for the benefit of lawyers, as to whether we are going to be deprived of some special privilege we may enjoy, but which ought to be considered from the standpoint of the commonwealth.

THE PRESIDENT: The question is now as to the adoption of the proposition as amended, limiting the verdict to not exceeding five hundred dollars.

Upon a rising vote duly taken, the amendment was declared by the President to be defeated.

THE PRESIDENT: The chair wishes to say that it is within the scope and jurisdiction of the Committee on Law Reform to pre-

sent resolutions upon any subject which may be of interest to the bar. I want to say to the gentleman who is now acting as chairman that he is only meeting the same fate as his predecessors. The Bar Association, I have observed, has been absolutely impartial in its treatment of that committee. Yet these discussions are exceedingly desirable. I hope the committee will keep right on with their good work.

There is a special committee with reference to amendments to the Constitution which is still to report of which Senator Carney is chairman. I will hear from that committee now.

SENATOR CARNEY: At the request of the committee I have undertaken to make a report, though it is not satisfactory to myself or the members of the committee. The matter came to our attention during the lunch hour and we have endeavored to do the best we could. I think the hour is too late, being near the time of adjournment, to take up in detail all the amendments suggested.

I will say, however, that the recommendations that were made are approved by the committee, so far as they relate to the increase of the Membership Committee of this Association, but that the remainder of the recommendations should stand over until the next meeting.

The proposed amendment to the Constitution is to change Article VI, line 5, to read as follows:

First. On Membership to be composed of such number as shall be provided in the By-Laws.

In connection with that we have approved the section of the By-Laws which increases the Committee on Membership to eleven members, one from each Congressional District.

It is proposed to amend Rule IV of the By-Laws by adding the following:

SEC. 7. A Membership Committee consisting of eleven members of this Association shall be appointed by the President before or immediately after the adjournment of each annual meeting. No two members of the committee shall reside in the same Congressional District, and each member of said committee is hereby empowered to appoint in each county in his district a sub-committee of three resident lawyers to canvass for membership of this Association all resident members of the bar of such county, with

power in each appointing body to remove for failure to perform the duties of the office.

THE PRESIDENT: I desire to say that shortly after I became President of this Association I appointed Mr. Cooper of Cedar Rapids chairman of the Committee on Membership. He took up the work in earnest, and the suggestions he has made have resulted in a large increase of membership. I am satisfied this will facilitate the work of securing a larger membership.

SENATOR CARNEY: I move the adoption of the changes in the Constitution and By-Laws which I have just read.

The motion was duly seconded and carried.

And in connection and because of what I have heard in regard to the work of Mr. Cooper, as the chairman of this Membership Committee and what I know, I move the thanks of this Association be tendered Mr. Cooper for the work he has done in increasing the membership.

The motion was duly seconded and carried.

THE PRESIDENT: If there is no farther business, we will take up the last section of the report of the Committee on Law Reform, the fifth recommendation.

CHAIRMAN EVANS: In reference to this fifth proposition, it is not a question of a primary law, because we have that. I do not know just what the reasons were which placed every other elective officer of the State and county under the primary system and left the judicial officers out. I am not here to defend or say anything in favor of the primary system. I presume it was suggested and adopted in order to relieve our officers and electors from a small clique of men or interests, and for the further purpose of getting close to the people and in order to hear the voice of the people.

It seems to me that if we are to continue our primary system, we ought not to compel our judicial officers, as they are at the present time, to remain in good standing with the class of people they must remain in good standing with if they are to receive preferment at the primary that nominates delegates to the county conventions—something over three hundred of them in our ju-

dicial district. And from that day to the convention time, I believe it to be true, that the judicial aspirants must feel humiliated by the things that come to them, as well as the things they feel almost impelled to do in presenting their claim to these three hundred people.

This proposition, as I take it, will come as near taking our judicial officers out of politics as any proposition we may present. It simply means that under such restrictions as the Legislature might adopt every man seeking a nomination would have his name on one ticket on primary day. That ticket would be delivered to Democrats, Republicans, or any other political party, and the two highest names thus selected should go on the official election ballot.

MAJOR LACEY: Are the names alphabetically arranged, and if so, does one political party precede the other at the top of the ballot?

CHAIRMAN EVANS: If in the wisdom of the Legislature there should be an advantage in the first name, provisions could be made for alternating the names. There would be no designation of any political party and no indication as to what party the candidate affiliated with.

I move the adoption of the recommendation.

SENATOR VAN LAW: I do not know that I have in mind the policy of the Association. I have understood that with respect to political questions the Association would take no stand. I assume, from the character of the discussion, this does involve something of a political question.

The Law Reform Committee understands that this was simply submitted for discussion and not for adoption. Upon that understanding my concurrence was given. I would raise the point of order that the adoption of this proposition is not before the Association.

THE PRESIDENT: I know no fundamental law that restricts us. My judgment, however, is that the Association ought to avoid as far as may be possible any matter that might savor of politics. But in any event as this was only reported for discussion, I would

think it hardly fair, in view of the fact that many members have already left for their homes, to take action upon it.

CHAIRMAN EVANS: I withdraw the motion.

Another matter was brought to our attention by Mr. O. M. Brockett of Polk County, with reference to the disbarment of attorneys. A few years ago a disbarment proceeding which occurred in Hamilton County was the subject of a decision by our courts to the effect that the attorney prosecuting the proceeding was entitled to compensation by the county for his services thus rendered. Immediately thereafter the Legislature enacted a statute which prohibited such compensation, leaving the attorneys who prosecuted the action without compensation for their services. Several matters are brought to our attention in connection with this, which suggests that it is almost impossible, without great sacrifice, to rid our profession of undesirable members.

Mr. Brockett sends a somewhat lengthy bill which he had prepared sometime ago, placing the disbarment of attorneys under the so-called Cosson law, making it the duty of the officers named in this law to take the same recognition of disbarment proceedings that they take in the removal of officers. The bill as drawn up by Mr. Brockett is as follows.

A Bill for an Act to Amend Chapter X of Title III of the Supplement of 1907, to the Code of Iowa, Entitled "Of Attorneys and Counsellors."

Be it enacted by the General Assembly of the State of Iowa:

Section I. That section 325 of the supplement of 1907 to the Code of Iowa, be and the same is hereby amended, by adding, after the word "it" and before the word "if" in the fifth line thereof the following:

"Such proceedings may also be commenced in the same manner as is provided by Chap. 78, of the laws of the Thirty-third General Assembly of the State of Iowa, in proceedings for the removal of county attorneys, mayors, police officers, marshals, and constables; in which latter case the duties of the Governor, Attorney General, Chief Justice of the Supreme Court of the State, and of the several county attorneys therein, with reference to such disbarment proceedings, shall be the same as is prescribed in said Chap. 78, in relation to proceedings for removal of officers under authority thereof."

And said section 325 is hereby further amended by adding after the word "court", and before the word "the" in the sixth line thereof, the following: "or order of the Governor, or upon complaint filed by the Attorney General or county attorney."

Section II. This act being deemed of immediate importance shall take effect and be in force from and after its publication in the Register and Leader and the Des Moines Capital, newspapers published in the city of Des Moines.

The bill is hardly in condition or form to be presented to the Association. I present the substance of it in the following recommendation or motion :

I move you that it is the sense of this Association that the procedure for the disbarment of attorneys should be placed by legislation under the statutes now enacted for the removal of public officers.

Duly seconded.

THE PRESIDENT: You have heard the motion, gentlemen. Personally the chair is of the opinion it would be very salutary legislation. The fact is, as we all know, our great and honorable profession is frequently brought into disrepute by reason of some miserable excrecence that grows upon the body politic. If we could get rid of this it would be a blessing to the State and the people who are victimized.

MR. E. E. HASNER: It seems to me that this motion ought to be considered before the convention before we vote upon it. It seems to me, if you are familiar with the rulings of our Supreme Court, there is adequate authority in the hands of the court and the members of the bar who better than anybody else know the situation and whose responsibility would be greater under whatever action it is proper to take. It was not until the statute was passed forbidding compensation to be paid to the attorneys to prosecute the proceedings that any such question as this arose. It would look now as if the only reason we are advocating a change is that the attorneys who are charged with looking after these matters are only willing to do so if they get adequate pay for doing that which it is their solemn duty to do.

I am radically against any attempt to change a time-honored rule, endorsed by the bars of all States. You are getting away from the theory under which this power should be exercised. I do not think we ought to adopt a resolution of this kind.

MR. PARRISH: It seems to me we ought not to dispose of this question in the time we have here now. I therefore move you this subject be continued until the next meeting of this Association for consideration.

Duly seconded.

The motion was duly carried.

Upon motion duly made the Association adjourned sine die.

CONSTITUTION AND BY-LAWS
OF
THE IOWA STATE BAR ASSOCIATION

CONSTITUTION

ARTICLE I

NAME

SECTION 1. This Association shall be known as the Iowa State Bar Association.

ARTICLE II

OBJECT

SECTION 1. This Association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal education, and to cherish a spirit of brotherhood among the members thereof.

ARTICLE III

MEMBERSHIP

SECTION 1. The membership of this Association shall be composed, first, of the charter members present at the organization as shown by the roll and paying the annual dues; and, second, members may be hereafter admitted to the Association on application to and recommendation by the Committee on Membership, provided the applicant be recommended for admission by either the County Bar Association of the applicant's county or by three members of this Association in good standing.

ARTICLE IV

OFFICERS

SECTION 1. The officers of this Association shall be a President, Vice-President, Secretary, Librarian, and Treasurer, who shall be elected at each annual meeting by ballot, without the intervention of a nominating committee, and who shall each hold office until his successor is elected and qualified.

SEC. 2. The members adopting this Constitution shall at once organize

by electing officers and an Executive Committee, as provided in Article V hereof, to serve until the first annual meeting hereafter to be held.

ARTICLE V

EXECUTIVE COMMITTEE

SECTION 1. The business of the Association shall be managed and controlled by an Executive Committee composed of the President, who shall be ex-officio Chairman, and eleven other members, one from each Congressional District, to be nominated by the members of this Association present from each Congressional District at each annual meeting.

SEC. 2. Any committee, standing or special, may consider and take action upon any matter of business pending before it, by correspondence; the vote being taken in writing and duly entered of record upon the minutes of such committee, and when so taken and entered shall stand as the act of the committee.

ARTICLE VI

STANDING COMMITTEES

SECTION 1. There shall be the following standing committees, who shall be elected by the Executive Committee, from the body of the Association, at their first meeting hereafter to be held and at their first meeting succeeding each annual meeting of this Association, to-wit:

First. On Membership, to be composed of such members as shall be provided in the By-Laws.

Second. On Grievances, to be composed of five.

Third. On Law Reform, to be composed of seven.

Fourth. On Legal Education and Admission to the Bar, to be composed of five.

Fifth. On Legal Biography, to be composed of three.

ARTICLE VII

FEES AND DUES

SECTION 1. The admission fee shall be three dollars (\$3), payable in advance, and to accompany the application for admission.

SEC. 2. The annual membership dues shall be three dollars (\$3), payable at each annual meeting, and if not paid within sixty days thereafter the membership may be forfeited, and the name of the delinquent shall not appear upon the published roll of membership.

SEC. 3. The payment of the admission fee shall relieve the member from further payment until the next annual meeting thereafter held.

ARTICLE VIII

ANNUAL MEETINGS

SECTION 1. The annual meeting shall be held at such time as the Executive Committee may determine. The annual meeting for 1895 shall be held in the city of Des Moines, but thereafter the place of meeting shall be selected by the Executive Committee.

ARTICLE IX**HONORARY DELEGATES**

SECTION 1. This Association will at any time admit as honorary delegates not exceeding two from the Bar Association of any county in the State, they to be entitled to all the privileges of membership at such meeting, with the exception of the right to vote and hold office.

ARTICLE X**BY-LAWS**

SECTION 1. The Executive Committee is charged with the duty of adopting appropriate By-Laws, not inconsistent herewith, for the government and control of the officers, committees and the business of the Association. These By-Laws shall be, however, subject to change by the Association at any regular meeting.

ARTICLE XI**AMENDING THE CONSTITUTION**

SECTION 1. This Constitution may be amended at an annual meeting by an affirmative vote of not less than two-thirds of all the members present, but can be amended by a majority vote when the proposed amendment has been submitted to the last preceding annual meeting of the Association.

BY - LAWS

RULE I**MEETINGS**

SECTION 1. The regular annual meetings of the Association shall be held at such time and place as shall be fixed by the Executive Committee and the place shall be announced by the Executive Committee before the adjournment of the annual meeting prior thereto.

QUORUM

SEC. 2. Twenty-five of the active members of the Association shall constitute a quorum for the transaction of business.

RULE II**ORDER OF BUSINESS**

SECTION 1. At the hour appointed for the annual meeting, the President, or in his absence the Vice-President, shall take the chair and the Secretary shall proceed to call the roll and note the members present. In the absence of both the President and Vice-President, the members present shall elect a President pro tempore as soon as the Secretary shall announce the presence of a quorum. Should no quorum attend within the hour appointed for the meeting, the members present shall fix a time for which the meeting shall stand adjourned.

SEC. 2. The order of business at the annual meeting shall be as follows:

First. Calling the roll of members.

Second. Presentation of petitions, letters, memorials, remonstrances and other papers which may be referred to appropriate committees and otherwise disposed of without debate.

Third. Report of Committee on Membership.

Fourth. Admission of Members.

Fifth. Address of President.

Sixth. Reports from other Standing Committees.

Seventh. Nomination and Election of Officers.

Eighth. Unfinished Business.

Ninth. New Business.

Tenth. Motions and Resolutions.

Eleventh. Annual address at such time as Executive Committee may determine, and other addresses, as arranged by program.

Twelfth. Banquet (evening of the first day).

RULE III

THE PRESIDENT

SECTION 1. The presiding officer shall rigidly enforce all rules adopted for the government of the Association, shall preserve order and decorum and in the debates shall prevent personal reflections and confine members to the question under discussion, countersign all orders of the Secretary upon the Treasurer, and appoint all committees whose election is not otherwise provided for.

RULE IV

THE SECRETARY

SECTION 1. The Secretary shall keep a full and complete list of the members and records of the proceedings of the Association and of the Executive Committee, draw orders upon the Treasurer for all sums of money ordered by the Association to be paid, give all persons elected written notice of the election, and attend to such other duties as may be imposed upon him at any meeting of the Association.

SEC. 2. The Secretary shall within ninety days after the close of each annual meeting, cause to be printed and published in book form such number of copies of the proceedings as the President and Secretary shall determine, containing a complete record of all the proceedings, including all papers presented to or read before the Association, all toasts given at the annual banquet, the reports of each and all officers and committees; the Constitution and By-Laws of the Association, with all amendments thereto in their proper places, a list of all the officers and members of the Association from the beginning, including the committees named at each meeting, and any other matters he may deem of sufficient importance to find a place in the volume.

He shall also make an accurate, complete, modern and thorough index of the proceedings, with cross references, etc., so that the matter contained in each volume may be rendered easily accessible; and preceding the index shall make and cause to be published a memorandum of all subjects referred to the committees, general and special, the subject of each and all of the annual addresses, giving author, and the subject and author of all papers read before the Association from its origin down to the time of the publication of the volume.

The same to be after the form and style of such memoranda as printed and published in the proceedings of the American Bar Association for the year 1898.

SEC. 3. In the published proceedings for the year 1901, he shall in addition to the regular index, make and publish a complete, accurate and thorough index, with usual cross references of all previous proceedings, giving volume or year and page of the proceedings where the matter referred to may be found.

SEC. 4. He shall receive in full compensation for services now or hereafter exacted of him, by by-law, rule, resolution, or vote of the Association, the sum of two hundred dollars per annum.

SEC. 5. All contracts for the publication of the proceedings shall be executed by the President and Secretary.

SEC. 6. Immediately on publication, the Secretary shall mail to each active member of the Association one copy of the proceedings; and the remainder shall be kept for sale and exchange. Exchanges may be made with such societies and organizations as the Executive Committee may direct; and the Executive Committee shall fix the price at which each volume may be sold.

SEC. 7. A Membership Committee consisting of eleven members of this Association shall be appointed by the President before or immediately after the adjournment of each annual meeting. No two members of the committee shall reside in the same Congressional District, and each member of said committee is hereby empowered to appoint in each county in his district a sub-committee of three resident lawyers to canvass for membership of this Association all resident members of the bar of such county, with power in each appointing body to remove for failure to perform the duties of the office.

RULE V

THE LIBRARIAN

SECTION 1. The Librarian shall receive from the Secretary all the printed literature of the Association, except a sufficient number of the proceedings of each year to distribute among the members of the Association, and shall preserve the same, and he is hereby directed to mail to each public library in the State of Iowa a copy of the proceedings of each year and to exchange proceedings with other Associations.

RULE VI

THE TREASURER

SECTION 1. The Treasurer shall collect all moneys due the Association, keep correct accounts of the receipts and expenditures, and also an account with each member, pay all orders drawn by the Secretary and countersigned by the President, and make a full and correct report of the condition of the treasury to the Association at each annual meeting and at any other time when requested by the Executive Committee, and perform such other duties as the Association may require. He shall furnish a bond in such sum and on such conditions as the President and Secretary may prescribe, the cost of which shall be paid by the Association.

RULE VII

OFFICERS AND THEIR ELECTION

SECTION 1. The President, Vice-President, Secretary, Treasurer and Executive Committee shall be elected at each annual session and hold their offices for one year and until their respective successors be duly elected.

SEC. 2. All elections for officers shall be by ballot, and a majority of the whole number of votes cast shall be requisite to the election of a candidate.

SEC. 3. Nominations shall be made to the annual meeting immediately preceding the time fixed for election.

SEC. 4. No member shall be entitled to vote at an election for officers until all arrears due by said member to the Association shall be paid.

RULE VIII

MEMBERS

SECTION 1. No person shall be admitted to membership unless he is a member of the Bar of the State of Iowa, in good standing and has been recommended as by the Constitution of this Association provided.

SEC. 2. No person shall be considered a member unless he shall have signed the roll and paid into the hands of the Treasurer the annual dues provided by the Constitution.

SEC. 3. Any gentleman learned in the law may be elected to honorary membership in the same manner as is required in the election to active membership.

SEC. 4. Honorary members shall be entitled to all the privileges of active members, excepting serving on committees, voting and holding office.

RULE IX

STRIKING FROM THE ROLL

SECTION 1. Any member who may be indebted to the Association in any sum shall receive written notice from the Treasurer, and if said member does not within two months after such notice pay his indebtedness, he shall be reported by the Treasurer to the President and Secretary and,

upon the concurrent action of a majority of such officers, he shall forfeit his membership, and shall be reinstated only upon the payment of all his indebtedness to the Association, and the concurrence of a majority of the members present at the annual meeting of the Association next following such settlement.

RULE X

COMMITTEES

SECTION 1. Besides the officers provided for in the charter, there shall be elected annually by the Executive Committee at the session immediately following such annual meeting, the following standing committees: Membership, Legal Education and Admission to the Bar, Grievances, Law Reform, Biography and History.

EXECUTIVE

SEC. 2. The President shall be ex-officio Chairman of the Executive Committee, which shall perform the duties in the manner specified in the charter. The Executive Committee shall annually select three persons, each of whom shall prepare and read at the annual meeting of this Association a paper upon subjects to be designated by the Executive Committee.

GRIEVANCES

SEC. 3. All complaints or charges of professional misconduct against any member shall in the first instance be made to this committee, who shall first investigate the same and report thereon. If such complaint or charges appear to be well founded this committee shall report to the Association what action in their judgment shall be taken thereon, whereupon the Association may, after a fair hearing, upon due notice to the accused, proceed to suspend or expel said member, and if the charge be such as comes in the summary jurisdiction of the courts, may order proceedings to be instituted and present the same against the party or parties accused, and shall appoint a committee of prosecution for each particular case.

LAW REFORM

SEC. 4. Any and all legislation proposed relative to the enactment of new laws or changes in those prevailing, shall be referred to this committee who shall examine and report its action upon the case.

LEGAL BIOGRAPHY AND HISTORY

SEC. 5. This committee shall receive all papers referred to them and shall collect all data obtainable touching the past history of the Bar of Iowa and the members thereof, arrange the same in order for publication, and report the same to the Association for its further order and action.

THE MARSHAL

SEC. 6. The Executive Committee shall appoint a Marshal, who shall,

under the general control of the President, assist in preserving order and perform the duties of a sergeant-at-arms of a deliberative body.

AUDITING

SEC. 7. The President shall at least ten days prior to each annual meeting, appoint an Auditing Committee of three members, at least two of whom shall be residents of the town or city where the Treasurer resides. To this committee shall be referred all reports of officers, and it shall be its duty to examine all books of accounts, vouchers and other matters relating to the financial management and condition of the Association.

RULE XI

RULES OF ORDER

SECTION 1. No motion, resolution or amendment (except to postpone, to lay on the table, or refer to a committee) shall be debatable unless offered in writing, seconded and stated by the President; and after it has been debated the President shall again state it before any vote shall be taken upon it.

SEC. 2. Unless specified, Roberts' Rules of Order shall be the guide and authority, when applicable, on all questions arising in the Association.

SEC. 3. All recommendations of the Committee on Law Reform shall be in writing and filed with the Secretary at least three weeks prior to the regular annual meeting. The Secretary shall thereupon cause same to be printed at the expense of the Association, and at least ten days prior to said annual meeting he shall send one printed copy of said recommendations to each and every member of the Association. No report not so filed and distributed, nor any part thereof, shall be considered and adopted unless by unanimous consent of all members present and voting on the proposition.

RULE XII

THE BY-LAWS

SECTION 1. Any article or section of the By-Laws may be temporarily suspended by a unanimous vote of the members present.

SEC. 2. By-Laws may be enacted, amended or repealed by a majority vote of the members present at any regular meeting.

RULE XIII

SECTION ON TAXATION

SECTION 1. There is hereby created a Section on Taxation, such Section to consist of six members, two of whom shall be annually appointed by the Executive Committee to serve for three years, together with such other members of the Association as may identify themselves with said Section to aid the work thereof. Of those first appointed under this rule, two shall be appointed for one year, two for two years and two for three years each.

SEC. 2. Said Section will immediately upon its appointment organize by electing from the six members so appointed the following officers: President, Vice-President and Secretary, the duties of which shall be those usually performed by such officers.

SEC. 3. Said Section shall have a meeting annually in connection with the annual meeting of this Association, and as a part of the same, and in the arrangement of the program of the Association a definite time, not exceeding one morning or afternoon session, shall be set apart to the proceedings of this Section, and at such time the meeting will be presided over by the President of this Section.

SEC. 4. By the concurrent action of the President of the Section and at least a majority of the Executive Committee of the Association, this Section shall be authorized to expend such sums of money as may reasonably appear to be necessary in collecting statistics, conducting investigation or in any other manner aiding the work of the Section.

SEC. 5. The proceedings of this Section shall be published under an appropriate heading and as a part of the proceedings of this Association.

**LIST OF OFFICERS
AND MEMBERS OF THE VARIOUS COMMITTEES
SINCE THE ORGANIZATION OF
THE IOWA STATE BAR ASSOCIATION**

1894

Temporary Chairman.....EMLIN McCLAIN, *Iowa City*
Temporary Secretary.....JAMES W. BOLLINGER, *Davenport*

1895

President.....A. J. McCraby, *Keokuk*
Vice-President.....L. G. KINNE, *Des Moines*
Secretary.....JAMES W. BOLLINGER, *Davenport*
Treasurer.....JOHN N. BALDWIN, *Council Bluffs*

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. B. Bane, New Hampton; Fifth District, D. E. Voris, Marion; Sixth District, L. C. Blanchard, Oskaloosa; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, D. C. Chase, Webster City; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Geo. W. Wakefield, Sioux City; H. O. Weaver, Wapello.

Legal Biography.—George G. Wright, Des Moines; H. S. Winslow, Newton; N. M. Hubbard, Cedar Rapids.

To Prepare By-Laws.—A. J. McCraby, Keokuk; E. S. Huston, Burlington; L. C. Blanchard, Oskaloosa.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Rose, Jefferson; T. B. Perry, Albia; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Auditing.—M. J. Wade, Iowa City; E. S. Huston, Burlington; Thomas A. Cheahire, Des Moines.

1896

President.....	L. G. KINNE, <i>Des Moines</i>
Vice-President.....	J. H. HENDERSON, <i>Indianola</i>
Secretary.....	JAMES W. BOLLINGER, <i>Davenport</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. O. Weaver, Wapello; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. R. Bane, New Hampton; Fifth District, George W. Burnham, Vinton; Sixth District, H. S. Winalow, Newton; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, P. L. Sever, Stuart; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—George G. Wright, Des Moines; H. S. Winalow, Des Moines; N. M. Hubbard, Cedar Rapids.

Constitution and By-Laws.—Charles M. Harl, Council Bluffs; Milton Remley, Iowa City; C. H. Hatch.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Rose, Jefferson; T. B. Perry, Albia; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; James G. Day, Des Moines.

1897

President.....	J. H. HENDERSON, <i>Indianola</i>
Vice-President.....	M. J. WADE, <i>Iowa City</i>
Secretary.....	NATHAN E. COFFIN, <i>Des Moines</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, Charles D. Leggett, Fairfield; Second District, E. M. Sharon, Davenport; Third District, J. J. McCarthy, Dubuque; Fourth District, J. H. McConlogue, Mason City; Fifth District, George W. Burnham, Vinton; Sixth District, Chas. R. Clark, Montezuma; Seventh District, John Shortley, Perry; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—H. S. Winalow, Newton; C. C. Nourse, Des Moines; A. J. McCrary, Keokuk.

Constitution and By-Laws.—Milton Remley, Iowa City; James W. Bollinger, Davenport; T. M. Fee, Centerville.

Law Reform.—A. B. Cummins, Des Moines; John Cliggett, Mason City; L. C. Blanchard, Oskaloosa; J. H. Preston, Cedar Rapids; P. W. Burr, Charles City; C. A. Carpenter, Columbus Junction; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. A. Park, Des Moines; M. J. Tobin, Vinton.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; P. L. Sever, Stuart; C. G. Saunders, Council Bluffs; W. J. Roberts, Keokuk.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; J. H. McConlogue, Mason City.

Program.—E. H. Crocker, Cedar Rapids; M. J. Wade, Iowa City; F. W. Eichelberger, Bloomfield.

1898

President.....	M. J. WADE, Iowa City
Vice-President.....	JAMES O. CROSBY, Garnaville
Secretary.....	NATHAN E. COFFIN, Des Moines
Treasurer.....	GEORGE F. HENRY, Des Moines

COMMITTEES

Executive.—First District, W. J. Roberts, Keokuk; Second District, James H. Feenan, Marengo; Third District, J. A. Rogers, Clarion; Fourth District, Wm. E. Fuller, West Union; Fifth District, E. H. Crocker, Cedar Rapids; Sixth District, Charles R. Clark, Montezuma; Seventh District, J. H. Henderson, Indianola; Eighth District, L. C. Meehem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winalow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. C. Blanchard, Oskaloosa; J. P. Steele, Winterset; C. A. Carpenter, Columbus Junction; J. H. Preston, Cedar Rapids; T. G. Harper, Burlington; B. F. Jordan, Boone; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—Lewis Miles, Corydon; C. E. Albrook, Eldora; Wm. H. Bailly, Des Moines; C. G. Saunders, Council Bluffs; J. J. McCarthy, Dubuque.

Delegates to American Bar Association.—H. E. Deemer, Red Oak; C. A. Dudley, Des Moines; J. M. Parsons, Rock Rapids.

Program.—J. E. E. Markley, Mason City; W. B. Quarton, Algona; W. D. Evans, Hampton.

 1899

President.....JAMES O. CROSBY, *Garnaville*.
 Vice-President.....L. C. BLANCHARD, *Oskaloosa*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, G. L. Johnson, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Ellison, Anamosa; Sixth District, David Ryan, Newton; Seventh District, J. P. Steele, Winterset; Eighth District, L. C. Mechem, Centerville; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winalow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Bemley, Anamosa; J. C. Mabry, Centerville; E. S. Huston, Burlington; J. B. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—J. J. McCarthy, Dubuque; A. J. House, Maquoketa; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—Alphonse Matthews, Dubuque; J. H. Henderson, Indianola; W. B. Quarton, Algona.

Program.—J. H. Quick, Sioux City; J. E. E. Markley, Mason City; E. C. Boach, Rock Rapids.

 1900

President.....L. C. BLANCHARD, *Oskaloosa*
 Vice-President.....J. J. MCCARTHY, *Dubuque*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, Fred Heinz, Davenport; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Ellison, Anamosa; Sixth District, Robert M. Haines, Grinnell; Seventh District, C. P. Holmes, Des Moines; Eighth District, J. C. Mabry, Centerville; Ninth District, Thomas Arthur, Logan; Tenth District, Wesley Martin, Webster City; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. P. Lyman, Grinnell; E. S. Huston, Burlington; J. A. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—George C. Scott, Le Mars; Charles Baker, Iowa City; J. M. Read, Des Moines.

Grievances.—A. J. House, Maquoketa; L. L. Livingston, Corydon; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—George W. Seever, Oskaloosa; J. C. Sherwin, Mason City; James O. Crosby, Garnaville.

Program.—A. E. Swisher, Iowa City; J. H. Preston, Cedar Rapids; Robert M. Haines, Grinnell.

 1901

President.....J. J. MCCARTHY, *Dubuque*
 Vice-President.....J. H. MCCONLOGUE, *Mason City*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, S. F. Smith, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. A. Hoyt, Fayette; Fifth District, J. H. Preston, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. D. Gamble, Knoxville; Eighth District, J. C. Mabry, Centerville; Ninth District, H. W. Byers, Harlan; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—H. E. Deemer, Red Oak; J. A. Rogers, Clarion; E. M. Sharon, Davenport.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. K. Evans, Corydon.

Membership.—Jacob Sims, Council Bluffs; M. W. Beach, Carroll; E. M. Carr, Manchester.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; E. M. Carr, Manchester; Erastus B. Soper, Emmetsburg; Wm. E. Fuller, West Union.

Delegates to American Bar Association.—E. E. McElroy, Ottumwa; L. C. Blanchard, Oskaloosa; C. C. Cole, Des Moines.

Program.—C. G. Saunders, Council Bluffs; H. W. Byers, Harlan.

1902

President.....J. H. McCONLOGUE, *Mason City*
 Vice-President.....ROBERT M. HAINES, *Grinnell*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, Ernest Kelley, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Geo. Dunham, Manchester; George F. Henry, Des Moines.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville; H. M. Remley, Anamosa.

Membership.—J. J. McCarthy, Dubuque; M. W. Beach, Carroll; C. W. Mullan, Waterloo.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; L. L. Ainsworth, West Union; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—A. E. Swisher, Iowa City; J. H. McConlogue, Mason City; W. L. Eaton, Osage.

Program.—J. H. McConlogue, Mason City; E. M. Carr, Manchester; J. C. Longueville, Dubuque; M. C. Matthews, Dubuque.

1903

President.....	ROBERT M. HAINES, <i>Grieanell</i>
Vice-President.....	GEO. W. WAKEFIELD, <i>Sioux City</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, E. E. McElroy, Ottumwa; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, A. N. Boeye, Webster City; Eleventh District, E. C. Roach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville.

Membership.—Wm. H. Baily, Des Moines; J. P. Lyman, Grinnell; C. G. Saunders, Council Bluffs.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; J. J. Clark, Mason City; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—M. J. Wade, Iowa City; W. L. Eaton, Osage; H. M. Remley, Anamosa.

Program.—Robert M. Haines, Grinnell; J. P. Steele, Winterset; C. A. Bishop, Des Moines.

Commission on Taxation.—Charles A. Clark, Cedar Rapids; C. G. Saunders, Council Bluffs.

1904

President.....	GEO. W. WAKEFIELD, <i>Sioux City</i>
Vice-President.....	A. E. SWISHER, <i>Iowa City</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	JESSE F. STEVENSON, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, Fred Heinz, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, H. T. Reid, Cresco; Fifth District, J. M. Grimm, Cedar Rapids;

Sixth District, E. E. McElroy, Ottumwa; Seventh District, Wm. H. Baily, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, Carl F. Kuehnle, Denison; Eleventh District, E. C. Roach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; J. F. Clyde, Osage; William E. Miller, Bedford.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—M. A. Roberts, Ottumwa; Wm. H. Baily, Des Moines; J. P. Lyman, Grinnell.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; W. B. Quarton, Algona; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—C. A. Dudley, Des Moines; E. M. Carr, Manchester; W. B. Quarton, Algona.

Program.—Geo. W. Wakefield, Sioux City; W. S. Withrow, Mount Pleasant; E. E. McElroy, Ottumwa.

Commission on Taxation.—J. H. McConlogue, Mason City; J. C. Mabry, Centerville.

1905

President.....	A. E. SWISHER, Iowa City
Vice-President.....	WM. H. BAILY, Des Moines
Secretary.....	SAM S. WRIGHT, Tipton
Treasurer.....	JESSE F. STEVENSON, Des Moines

COMMITTEES

Executive.—First District, W. M. Walker, Keosauqua; Second District, John F. Devitt, Muscatine; Third District, S. M. Weaver, Iowa Falls; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, E. E. McElroy, Ottumwa; Seventh District, C. A. Dudley, Des Moines; Eighth District, P. C. Preston, Creston; Ninth District, C. E. Dean, Glenwood; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—George W. Wakefield, Sioux City; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Constitution and By-Laws.—J. A. Rogers, Clarion; B. A. Yonker, Des Moines; Wm. McNett, Ottumwa.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Bembey, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—Wm. H. Baily, Des Moines; M. A. Roberts, Ottumwa; J. P. Lyman, Grinnell.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—Geo. W. Wakefield, Sioux City; James W. Bollinger, Davenport; M. A. Roberts, Ottumwa.

Program.—C. A. Dudley, Des Moines; A. E. Swisher, Iowa City; George F. Henry, Des Moines.

Commission on Taxation.—E. E. McElroy, Ottumwa; James C. Davis, Des Moines.

Delegates to the World's Congress of Lawyers at St. Louis, Mo.—At Large, S. M. Weaver, Iowa Falls; At Large, H. M. Towner, Corning; First District, H. M. Eicher, Washington; Second District, Wm. Hoffman, Muscatine; Third District, J. J. McCarthy, Dubuque; Fourth District, James O. Crosby, Garnavillo; Fifth District, J. L. Carney, Marshalltown; Sixth District, L. C. Blanchard, Oskaloosa; Seventh District, C. C. Cole, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, H. E. Deemer, Red Oak; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Scott M. Ladd, Sheldon.

 1906

President.....WM. H. BAILY, *Des Moines*
 Vice-President.....H. M. TOWNER, *Corning*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....JESSE F. STEVENSON, *Des Moines*

COMMITTEES

Executive.—W. H. Baily, ex-officio chairman; First District, W. M. Keeley, Washington; Second District, J. F. Devitt, Muscatine; Third District, Charles W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. W. Willett, Tama; Sixth District, W. G. Clements, Newton; Seventh District, Carroll Wright, Des Moines; Eighth District, William E. Crum, Bedford; Ninth District, Henry B. Holman, Guthrie Center; Tenth District, J. E. Wickham, Garner; Eleventh District, F. F. Faville, Storm Lake.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnavillo; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Law Reform.—Charles A. Clark, Cedar Rapids; H. M. Bembey, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; B. M. Wright, Ft. Dodge; James W. Bollinger, Davenport.

Membership.—C. L. Powell, Des Moines; W. J. Roberts, Keokuk; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—Charles A. Dudley, Des Moines; J. H. McConlogue, Mason City; M. J. Wade, Iowa City.

Commission on Taxation.—J. H. McConlogue, Mason City (elected 1903); J. C. Mabry, Centerville (elected 1903); E. E. McElroy, Ottumwa (elected 1904); James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905).

1907

President.....H. M. TOWNER, *Corning*
 Vice-President.....D. D. MURPHY, *Elkader*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....CHARLES S. WILCOX, *Des Moines*

COMMITTEES

Executive.—H. M. Towner, ex-officio chairman; First District, C. A. Carpenter, Columbus Junction; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, W. R. Lewis, Montezuma; Seventh District, C. G. Lee, Ames; Eighth District, W. E. Miller, Bedford; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, Wealey Martin, Webster City; Eleventh District, M. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; O. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnavillo; P. B. Wolfe, Clinton; E. M. Sharon, Davenport.

Law Reform.—James W. Bollinger, Davenport; Charles A. Clark, Cedar Rapids; H. M. Remley, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; R. M. Wright, Ft. Dodge.

Membership.—C. S. Grilk, Davenport; C. L. Powell, Des Moines; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—W. H. Baily, Des Moines; A. E. Swisher, Iowa City; M. A. Walsh, Clinton.

Commission on Taxation.—James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905); W. O. McElroy, Newton (elected to fill unexpired term of E. E. McElroy who was elected in 1904); C. P. Smith, Mason City (elected 1906); A. B. Wells, Corning (elected 1906).

1908

President.....	D. D. MURPHY, <i>Elkader</i>
Vice-President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—D. D. Murphy, ex-officio chairman; First District, Charles J. Wilson, Washington; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, A. N. Hobson, West Union; Fifth District, James H. Crosby, Cedar Rapids; Sixth District, Henry Silwold, Newton; Seventh District, R. L. Parrish, Des Moines; Eighth District, Thomas L. Maxwell, Creston; Ninth District, Charles M. Harl, Council Bluffs; Tenth District, Carl F. Kuehnle, Denison; Eleventh District, W. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; W. R. Lewis, Montezuma.

Law Reform.—M. J. Wade, Iowa City; George W. Dunham, Manchester; J. L. Carney, Marshalltown; H. M. Remley, Anamosa; J. H. Henderson, Indianola; W. D. Evans, Hampton; C. A. Dudley, Des Moines.

Membership.—F. C. Platt, Waterloo; Charles Grilk, Davenport; C. L. Powell, Des Moines.

Grievances.—W. B. Quarton, Algona; E. H. Crocker, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa; Wesley Martin, Webster City.

Delegates to the American Bar Association.—H. M. Towner, Corning; E. M. Sharon, Davenport; Shirley Gilliland, Glenwood.

Program.—D. D. Murphy, Elkader; H. M. Towner, Corning; James W. Bollinger, Davenport.

Uniform Laws.—Charles G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; William H. Baily, Des Moines; A. E. Swisher, Iowa City; L. C. Blanchard, Okaloosa.

1909

President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Vice-President.....	CHARLES M. HARL, <i>Council Bluffs</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—J. W. Bollinger, ex-officio chairman; First District, Marsh W. Bailey, Washington; Second District, A. J. House, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, Charles E. Scholz, Gut-

tenberg; Fifth District, J. L. Carney, Marshalltown; Sixth District, M. A. Roberts, Ottumwa; Seventh District, J. K. Macomber, Des Moines; Eighth District, Lloyd Thurston, Osceola; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, Dwight G. McCarty, Emmetsburg; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Charles Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. B. Lewis, Montesuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; J. L. Carney, Marshalltown; H. O. Weaver, Wapello; Wm. McNett, Ottumwa; J. A. Howe, Des Moines; C. W. Mullan, Waterloo; H. K. Evans, Corydon.

Membership.—J. H. Egermayer, Marshalltown; J. K. Macomber, Des Moines; O. B. Courtright, Waterloo.

Grievances.—H. M. Towner, Corning; J. D. Gamble, Knoxville; J. C. Mabry, Centerville; W. B. Quarton, Algona; W. R. Green, Audubon.

Delegates to American Bar Association.—D. D. Murphy, Elkader; J. F. Devitt, Muscatine; Henry Vollmer, Davenport.

1910

President.....	CHARLES M. HARL, Council Bluffs
Vice-President.....	J. L. CARNEY, Marshalltown
Secretary.....	CHARLES M. DUTCHER, Iowa City
Treasurer.....	CHARLES S. WILCOX, Des Moines
Librarian.....	A. J. SMALL, Des Moines

COMMITTEES

Executive.—C. M. Harl, Council Bluffs, ex-officio chairman; First District, Hazen I. Sawyer, Keokuk; Second District, J. F. Devitt, Muscatine; Third District, A. J. Edwards, Waterloo; Fourth District, D. D. Murphy, Elkader; Fifth District, J. W. Willett, Tama City; Sixth District, H. G. Lyman, Grinnell; Seventh District, Jesse A. Miller, Des Moines; Eighth District, C. J. Lewis, Mt. Ayr; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, W. W. Goodykoontz, Boone; Eleventh District, W. M. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Chas. Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. B. Lewis, Montesuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; Jesse A. Miller, Des Moines; Wm. McNett, Ottumwa; J. L. Carney, Marshalltown; J. J. Clark, Mason City; L. H. Harpel, Boone; W. P. Briggs, Sheldon.

Grievances.—H. M. Towner, Corning; T. S. Stevens, Hamburg; H. E. Taylor, Waukon; Chas. S. Bradshaw, Des Moines; W. D. Milligan, Guthrie Center.

Uniform Laws.—Chas. G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; M. J. Wade, Iowa City; Wm. H. Baily, Des Moines; C. J. Wilson, Washington.

Program.—C. M. Harl, Council Bluffs; J. W. Bollinger, Davenport; J. L. Carney, Marshalltown.

Delegates to American Bar Association.—J. W. Bollinger, Davenport; S. M. Weaver, Iowa Falls; W. D. Milligan, Guthrie Center.

 1911

President.....	J. L. CARNEY, <i>Marshalltown</i>
Vice-President.....	C. G. SAUNDERS, <i>Council Bluffs</i>
Secretary.....	CHARLES M. DUTCHEE, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive Committee.—J. L. Carney, ex-officio, chairman; First District, Marah W. Bailey, Washington; Second District, J. P. Devitt, Muscatine; Third District, Franklin C. Platt, Waterloo; Fourth District, B. W. Newberry, Strawberry Point; Fifth District, J. H. Egermayer, Marshalltown; Sixth District, M. A. Roberts, Ottumwa; Seventh District, W. W. Cardell, Perry; Eighth District, W. D. Evans, Hampton; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, W. W. Goodykoontz, Boone; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Chas. N. Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—W. R. Lewis, Montezuma; J. O. Crosby, Garnaville; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; Carroll Wright, Des Moines; M. A. Roberts, Ottumwa; J. J. Clark, Mason City; W. P. Briggs, Sheldon; A. N. Hobson, West Union; C. H. Van Law, Marshalltown.

Membership.—Frank Nash, Oskaloosa; Frank S. Dunshee, Des Moines; J. H. Egermayer, Marshalltown.

Grievances.—H. M. Towner, Corning; T. S. Stevens, Hamburg; A. Chapin, McGregor; Chas. S. Bradshaw, Des Moines; W. D. Milligan, Guthrie Center.

Delegates to American Bar Association.—J. L. Carney, Marshalltown; J. B. Weaver, Jr., Des Moines; F. F. Faville, Storm Lake.

Program.—J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Jas. A. Devitt, Oskaloosa.

 1912

President.....	C. G. SAUNDERS, <i>Council Bluffs</i>
Vice-President.....	H. E. DEEMER, <i>Red Oak</i>
Secretary.....	H. C. HORACK, <i>Iowa City</i>
Treasurer.....	FRANK T. NASH, <i>Oskaloosa</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive Committee.—C. G. Saunders, ex-officio, chairman; First District, E. D. Morrison, Washington; Second District, H. C. Horack, Iowa City; Third District, G. W. Dunham, Manchester; Fourth District, J. H. McConlogue, Mason City; Fifth District, H. M. Remley, Anamosa; Sixth District, W. R. Lewis, Montezuma; Seventh District, J. H. Henderson, Indianola; Eighth District, L. H. Mattox, Shenandoah; Ninth District, O. W. Witham, Greenfield; Tenth District, J. W. Morse, Estherville; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—S. M. Ladd, Des Moines; E. B. Evans, Des Moines; Ralph Otto, Iowa City; H. J. Wilson, Burlington; J. C. Frances, Tipton.

Legal Biography.—C. J. Wilson, Washington; W. R. Lewis, Montezuma.

Law Reform.—E. B. Evans, Des Moines; J. J. Clark, Mason City; M. A. Roberts, Ottumwa; C. H. Van Law, Marshalltown; E. W. Weeks, Guthrie Center; Carroll Wright, Des Moines; A. N. Hobson, West Union.

Membership.—A. T. Cooper, Cedar Rapids; Frank S. Dunshee, Des Moines; James A. Devitt, Oakaloosa.

Grievances.—J. B. Weaver, Jr., Des Moines; S. B. Stevens, Hamburg; John McCoy, Oakaloosa.

Delegates to American Bar Association.—H. C. Horack, Iowa City.

Program.—C. G. Saunders, Council Bluffs; H. E. Deemer, Red Oak.

1913

President.....	H. E. DEEMER, <i>Red Oak</i>
Vice-President.....	JOHN F. LACEY, <i>Oskaloosa</i>
Secretary.....	H. C. HORACK, <i>Iowa City</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>
Treasurer.....	FRANK T. NASH, <i>Oskaloosa</i>

COMMITTEES

Executive Committee.—H. E. Deemer, ex-officio, chairman; First District, H. J. Wilson, Burlington; Second District, Emlin McClain, Iowa City; Third District, George A. McIntyre, Shell Rock; Fourth District, C. E. Scholz, Guttenberg; Fifth District, C. H. Van Law, Marshalltown; Sixth District, U. M. Reed, Brooklyn; Seventh District, R. M. Haines, Des Moines; Eighth District, L. H. Mattox, Shenandoah; Ninth District, I. N. Flickinger, Council Bluffs; Tenth District, J. W. Morse, Estherville; Eleventh District, George Jepson, Sioux City.

Legal Education and Admission to the Bar.—Scott M. Ladd, Des Moines; Ralph Otto, Iowa City; Louis Block, Davenport; F. W. Sargent, Sioux City; C. A. Dudley, Des Moines.

Legal Biography.—J. B. Weaver, Jr., Des Moines; W. R. Lewis, Montezuma; C. J. Wilson, Washington.

Law Reform.—E. B. Evans, Des Moines; J. J. Clark, Mason City; C. H.

Van Law, Marshalltown; W. E. Johnston, Ida Grove; A. N. Hobson, West Union; F. F. Dawley, Cedar Rapids; Robert Healy, Fort Dodge.

Membership.—O. D. Nickle, Sioux City; A. H. Hollingsworth, Keokuk; W. M. Davis, Iowa City; E. H. McCoy, Waterloo; A. L. Rule, Mason City; C. E. Walters, Toledo; T. J. Bray, Grinnell; Clifford Cox, Des Moines; V. R. McGinnis, Leon; Henry Peterson, Council Bluffs; Thomas McCarty, Emmetsburg.

Grievances.—E. C. Roach, Rock Rapids; F. F. Faville, Storm Lake; D. F. Stockman, Sigourney; E. M. Carr, Manchester; W. B. Quarton, Algona.

Delegates to American Bar Association.—Scott M. Ladd, Des Moines; H. C. Horack, Iowa City; E. M. Carr, Manchester.

Program.—H. E. Deemer, Red Oak; R. M. Haines, Des Moines; M. J. Wade, Iowa City.

Uniform Laws.—N. D. Ely, Davenport; J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Charles S. Bradshaw, Des Moines; Glen Brown, Dubuque.

Section on Taxation.—J. H. McConlogue, Mason City; Charles A. Clark, Cedar Rapids; John T. Clarkson, Albion; J. C. Mabry, Centerville; Wesley Martin, Webster City; Frank O'Connor, New Hampton.

Constitution and By-Laws.—A. T. Cooper, Cedar Rapids; R. M. Haines, Des Moines; J. A. Devitt, Oskaloosa.

ANNUAL ADDRESSES

1895. L. G. KINNE—"How the Supreme Court Disposes of Cases."
1896. JOHN BARTON PAYNE—"The Legal Profession. Its Opportunities and Obligations."
1897. JOHN GIBBONS—"Security Under the Law is the Shaft and Shield of the Republic."
1898. H. C. TOMPKINS—No address.
1899. J. H. MCCONLOGUE—"The American Lawyer: his Obligations and Opportunities."
1900. JOHN L. WEBSTER—"Has the United States a Duty and a Destiny to Fulfill in China?"
1901. SMITH MCPHERSON—"The Recent Insular Tariff Decisions by the Supreme Court of the United States."
1902. PAUL E. CARPENTER—"Some of the Legal Phases of Insanity."
1903. DAVID J. BREWER—"The Triumph of Justice."
1904. No address.
1905. EMLIN MCCLAIN—"Limitations on Federal Power in the Government of Territories."
1906. JOHN CAMPBELL—"Freedom of the Executive in Exercising Governmental Functions from Control by the Judiciary."
1907. HANNIS TAYLOR—"The Science of Jurisprudence."
1908. GEORGE B. PECK—"The March of the Constitution."
1909. JOHN H. WIGMORE—"The Science of Criminology—Rules of Evidence in Criminal Cases."
1910. C. S. THOMAS—"Justice Delayed is Justice Denied."
1911. JOHN BURKE—"Employers' Liability and Workingmen's Compensation Acts."
1912. WILLIAM RENWICK RIDDELL—"Comparison of the Constitution of the United States and Canada."

PAPERS READ

1896

L. G. KINNE—"*Procedure and Methods of the Courts of Final Resort of the Republic of Mexico, the United States of America, and of the Several States and Territories of the Union.*"

1897

J. H. HENDERSON—"*The Enactment of Law; its Observance and Enforcement.*"

1898

M. J. WADE—"*The Association and its Objects.*"

1899

JOHN M. READ—"*Trusts.*"

D. D. MURPHY—"*Some Proposed Reforms in the Administration of the Criminal Law.*"

JAS. O. CROSBY—*President's Address.*

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Referred to the President, Secretary, and Librarian, p. 137.

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Whitmore, Chester W.	Ottumwa	Ziegler, A. H. F.	Anita
Wichman, J. E.	Garner		

INDEX

[Titles of papers and addresses are printed in *italics*.]

- Action, right to bring, 170, 171
Agent, service of, 171, 172
Allison, William B., 124
American Bar Association, Delegates to, 181
American Courts as a Canadian Sees Them, 126-134
Annual Addresses, 223
Arizona, 73; Constitution of, 84
Arnold, Benedict, 93
Assyrians, code of, 73
Attainder, bills of, 87
Attorneys, disbarment of, 196-198
Auditing Committee, members of, 35; report of, 181
Authority, Respect for, 101-103
- Babylonians, code of, 73
Back Numbers, 98-101
Baker, A. J., 114
Baldwin, Caleb, 116, 121
Baldwin, Charles, 33
Banking, restriction of right of, 172
Banquet, proceedings of, 97-134
Bar Association, Iowa State, next meeting of, 4; need of larger membership in, 7, 8; duty of, 9; recommendation relative to proceedings of, 23-25; biographies of deceased members of, 25-35; proposed amendments to Constitution of, 193, 194; constitution and by-laws of, 199-207; officers of, 228
Bar Association, Early State, proceedings of, 36, 37
Barrington, Sir Jonah, 79
Bartholomew, Judge, 114
- Beck, Joseph M., 116
Belknap, William W., 114
Berry, William, paper by, 45-67
Bloody Jeffreys, 77, 78
Boies, Horace, 124
Bowman, John G., response to toast by, 103-106
Bradley, Justice, 111
Bradshaw, Charles S., paper by, 37
Brockett, O. M., bill by, 196, 197
Brown, C. M., discussion by, 189, 190
Brown, John, 92
Brown, Timothy, biographical sketch of, 26
Brunner, William, biographical sketch of, 27
Bryan, P. Gad, 114
Burkhalter, Reverend A. R., invocation by, 5
Burr, Aaron, trial of, 92
By-laws of Association, 201-207
- Caldwell, H. C., 33, 114
Canada, 110, 111
Canada, The Constitution of the United States and, 156-180
Carney, J. L., report by, 193, 194
Carr, E. M., discussion by, 186, 188, 189
Cedar Rapids, meeting of Association at, 5
Charles II, 78
China, representative government in, 74
Chrisman, Herring, biographical sketch of, 27, 28
Civil War, 69

- Clark, G. W., 114
 Clark, J. S., 114
 Clarkson, John T., report by, 181
 Cleland, John B., 30
 Clements, David Watherup, biographical sketch of, 28
 Code of Procedure, 73
 Cole, Chester C., 116
College of Law, The Spirit of the, 104-106
 Colonies, 76, 77; government of, 78
 Commerce clause, 87
 Committee, special, subject referred to, 137
 Committees, appointment of, 15, 96, 135, 136, 183, 184; reports of, 15, 22, 25-35, 37, 144-146, 181-183, 193, 194; list of members of, since organization of Association, 208-223
 Congress, unique character of, 74
 Constitution of Bar Association, proposed amendments to, 193, 194; text of, 199-201
 Constitution of Iowa, amendment to, relative to ditches, 88
 Constitution of United States, character of drafters of, 75, 76; favorable conditions at time of drafting of, 76, 77; guarantees in, 87; amendment to, 110, 111
Constitution of the United States and Canada, The, 156-180
 Contracts, impairment of obligation of, 166
 Cooney, James, biographical sketch of, 27
 Cooper, Albert T., report by, 15-22
 Cooper, W. L., letter from, 192
 Cotten, W. A., biographical sketch of, 29
 County Attorney, information concerning prisoners given by, 50
 Court of Appeals, United States, 87
 Courts, indictments against, 72, 73; position of, in English history, 78, 79; criticism of, 87; attitude of public toward, 109; position of, in Canada and United States, 177-180
 Crime, classification of causes of, 61; theories of, 63, 64
 Criminal law, suggestion relative to administration of, 59-61; lax administration of, 109, 110
 Criminals, classification of, 61; method of dealing with, 62-67; sympathy for, 86
 Crocker, General, 112, 114
 Crookham, John A. L., 123
 Crosby, James O., 68; discussion by, 93-96, 149, 154, 184, 185; report by, 181
 Curtis, Samuel B., 114, 122
 Dartmouth College Case, 164, 165
 Davis, Frank M., 114
 Day, James G., 115
 Decisions, recommendation of law relative to reversal of, 144, 146-148
 Deemer, H. E., committees appointed by, 183, 184
 De Graff, Lawrence, motion by, 153, 154
 Demagogue, opportunity for, 70, 71
 Democracy, experiments in, in past, 73, 74
 Dickinson, John, 85
 Dillon, John F., 112, 116
 Disbarment of attorneys, 196-198
 Dissenting opinions, 103
 District judges, salary of, 116; recommendation relative to nomination of, 145, 194-196; power of, relative to arguments, 185, 186
 Ditches, constitutional amendment relative to, 88
 Duma, 74
 Dungan, W. S., 114

- Early Bench and Bar of Iowa, The*, 113-126
- Eaton, Willard Lee, biographical sketch of, 29-31
- Elliott, John, 34
- Ellsworth, Oliver, 76
- Ellwood, Charles A., 63, 64
- Elmira (New York), reformatory at, 67
- England, 76, 111; position of courts in, 78, 79; removal of judges in, 79; slowness of change of laws in, 88; position of Parliament in, 159, 160
- Equal rights, 171, 172
- Evans, E. B., response to toast by, 98-101; report by, 144-146; discussion by, 150, 152, 153, 154, 186, 187, 192, 194, 195, 196, 197
- Executive, position of, in Canada and United States, 162-164
- Executive Committee, report of, 183; members of, 228
- Ex post facto laws, 87
- Fancher, George G., biographical sketch of, 31
- Federal Convention of 1787, 73; members of, 75, 76; state of public affairs at time of, 80, 81
- Federal Judges, demand for recall of, 71, 72
- Feudalism, 77
- Finland, 88
- Flickinger, I. N., report by, 182
- Florence (Italy), democracy in, 73, 74
- France, changes in laws of, 88
- Franklin, Benjamin, 75, 83
- Freeland, J. W., biographical sketch of, 31, 32
- Garland, Hamlin, 119
- Germany, slowness of change in laws in, 88
- Gerry, Elbridge, 83
- Gladstone, William E., 77
- Glasgow, S. L., 114
- Godfrey, G. L., 114
- Goodfellow, H. C., 83
- Government, stable condition of, 70; dissatisfaction with, 71; only new principle of, 74; dependence of success of, on people, 74, 75
- Grant, James, 121, 122
- Greece, democracy in, 73
- Greene, George, tribute to, 6; reference to, 116
- Grievances, Committee on, report of, 37
- Grimm, John M., address of welcome by, 6-12
- Guarantees, need of constitutional, 87, 88
- Habeas corpus, 78
- Hadley, Governor H. E., response to toast by, 107-112
- Hagerman, Frank, 107
- Hagerman, James, 107
- Haines, R. M., discussion by, 148
- Hamilton, Alexander, 76, 84, 92, 93, 115
- Hammill, John, response to address of welcome by, 12-14
- Hammurabi, Code of, 73
- Hancock, John, 115
- Harris, Amos, 33
- Harvard University, Chinese graduates of, 74
- Hasner, E. E., discussion by, 148, 197
- Healy, Robert, response to toast by, 101-103
- Henderson, David B., 124
- Henderson, John Fullerton, biographical sketch of, 32
- Hepburn, W. P., 114
- Horack, H. C., report by, 183
- Hubbard, N. M., 114

- Immigration, 70
 Indemnity, statutes of, 170
 Indeterminate sentence, investigation of workings of, 45, 46
Indeterminate Sentence, The, 45-67
 Inheritance tax law, repeal of, 93-96
 Injunctions, complaint against, 87
 Innocent men, rarity of conviction of, 52
 Interests, influence of, 90, 91
 Inventions, 69
 Iowa, administration of parole law in, 45-62; few cases reversed on technicality in, 73; freedom of judges of, from politics, 89, 90; freedom of judges of, from influence of "interests", 90, 91; recall of judicial decisions in, 111
Iowa, The Early Bench and Bar of, 113-126
 Iowa Reports, publisher of early, 6
 Isbell, Norman W., 116
 Italy, anarchy in free cities in, 73
- James I, 78, 111
 Jefferson, Thomas, 93, 115
 Jewish people, period of highest prosperity of, 74
 Johnson, E. C., discussion by, 149, 187, 188
 Johnson, Wetter H., biographical sketch of, 32, 33
 Johnstone, Edward, 124
 Jones, F. F., 46
 Judges, recall of, 8, 14, 71-93, 98-100, 101-103, 110, 112; criticism of, 13; information concerning prisoners given by, 50; position of, in England, 79; agreement concerning, among drafters of Constitution, 82; number of, in nation, 86; freedom of, from politics, 89, 90; influence of "interests" over, 90, 91; services of, to nation, 91-93; salary of, 116
- Judgments, recommendation of law relative to setting aside of, 144, 146-148
 Judicial decisions, recall of, 8, 72, 101, 102, 110, 111
Judicial Recall, The, 68-93
 Judiciary, origin of, 75-78
 Judiciary, debate in constitutional convention concerning, 82-86; criticism of, 101
 Jurisprudence, defects in, 99; attitude of public toward, 109
 Jury cases, recommendation of law limiting argument in, 145, 184-186; recommendation of law relative to verdicts in, 145, 186-192
 Jury system, establishment of, in England, 78
Juvenile Delinquent and his Treatment, The, 37
- Kasson, John A., 124
 Kings, divine right of, 77
 Kinne, L. G., 90
 Kirkwood, Samuel J., 39
 Knapp, J. C., 33
 Knox, John, 81
- Labor disputes, injunction in, 87
 Lacey, John F., response to toast by, 112-126; discussion by, 153, 195
 Ladd, Scott M., report by, 25; discussion by, 96, 150, 151
 Lafayette, Marquis de, 115
 Lake, Jed, 108, 114
 Lake, Rush C., 108
 Law, dependence of, upon people for enforcement, 75
 Law Department of State Library, description of, 40-45
 Law Reform, Committee on, report of, 144-146; discussion of report of, 146-154, 184-193, 194-198; vote on report of, 148, 154, 186, 192

- Law school, 104-106
Lawyers, influence of, 10, 11, 109;
duties of, 11, 12; biographies of
deceased, 25-35
Lee, Richard Henry, 81
Legal Biography, Committee on, re-
port of, 25-35
Legal Education and Admission to
the Bar, Committee on, report of,
25
Legislation, powers of, in Canada
and United States, 161, 163-176
Legislative Reference Department,
40, 43, 44
Legislatures, unique character of,
74; complaints against, 101, 102;
position of, in Canada and United
States, 159-162, 163-176
Lehmann, Frederick W., 107
Libel laws, 102
Librarian, report of, 35, 36
Lincoln, Abraham, 105, 116
Litigation, possibility of reducing
cost of, 73
Lombroso, Cesare, 63, 64
Loughbridge, Judge, 115
Lowe, Ralph P., 116

McFarland, Samuel J., 115
McJunkin, J. F., 32
Mackey, C. H., 114
Madison, James, 76, 83, 84, 93
Magna Charta, 77, 160, 167
Manchu, expulsion of, 74
Manning, Edward, 33
Manual training, 67
Marshall, John, 8, 38, 92, 111, 115,
165
Mason, George, 76, 83
Massachusetts, 81, 84
Mayflower, 77
Maynard, Sargeant, 79
Members, list of, 229-236
Membership, Committee on, report
of, 15-23

Minnesota, 87
Miller, Daniel F., 124
Miller, Samuel F., 112, 121, 122
Missouri, 107, 108; recall of judicial
decisions in, 111
Mitchell, John, 114
Moore, William, biographical sketch
of, 33
Morris, Gouverneur, 76, 85
Moses, code of, 74
Mt. Vernon, 67, 68

Nash, Frank T., report by, 22, 23
Nation, building of, 68, 69; spirit of
unrest in, 70, 71
New Hampshire, colonial library of,
38
New Jersey, establishment of state
library in, 38
New Orleans, 75
New York, establishment of state
library in, 38; reformatory system
in, 67
Nicholson, Sir Francis, 38
Nominating Committee, report of,
181, 182
Nomination of judges, recommenda-
tion relative to, 145, 194-196

Oberlin (Ohio), 75
Officers, election of, 181, 182; list
of, since organization of Associa-
tion, 208-222; list of, for 1912-
1913, 228
Officials, blame heaped upon, 71
Oklahoma, 111
Olney, Judge, 115
Opinions, number of, in Iowa, 86
Oregon, 73
Otis, James, 105
Oxford University, 74

Packers' Case, 99
Palmer, Dennison B., biographical
sketch of, 34

- Papers read before Association, list of, 224-227
- Parliament, position of, 159, 160
- Parole, Board of, creation of, 46; workings of, 48-62; composition of, 62
- Parole Law: The Indeterminate Sentence, The Administration of the*, 45-67
- Parriah, J. L., paper by, 137-143; discussion by, 146-148, 151, 152, 185, 186, 198
- Patterson, William, 76, 83
- Pendleton, Judge, 115
- Penitentiary, 46
- Pennsylvania, establishment of state library in, 38
- People, dependence of government upon, 74, 75; influence of will of, 92
- Pergler, Charles, discussion by, 190, 191
- Persia, representative government in, 74
- Phillips, Wendell, 92
- Pinckney, Charles, 76, 82
- Pinkerton, William Allen, 63, 64
- Plymouth Rock, 77
- Polk, James K., 125
- Portugal, 88
- Prisoners, parole of, 45-67; suggestion relative to trial and sentence of, 61, 62
- Private property, 167-169
- Procedure, reform in rules of, 72, 73; defects in, 99, 100
- Prosperity, increase of, 69, 70
- Railroad Problems, Some*, 137-143
- Railroads, regulation of, 138-140, 143; statistics of, 140-142; liability of, for killing of stock, 173
- Randolph, Edmund, 76, 82, 83, 85
- Rankin, J. W., 114
- Recall of judges, 8, 14, 71-93, 98-100, 101-103, 110-112
- Recall of judicial decisions, 8, 72, 101, 102, 110, 111
- Reed, J. R., 114, 121
- Reform School, lack of manual training in, 67
- Reformatory, establishment of, 46; industries taught at, 53
- Representative government, progressive character of, 74
- Resolutions, Committee on, report of, 182
- Respect for Authority*, 101-108
- Reversal of decisions, 110; recommendation of law relative to, 144, 146-148
- Revolutionary War, 76, 77
- Richman, J. Scott, 115
- Riddell, William Renwick, response to toast by, 126-134; annual address by, 155-180
- Rome, democracy in, 73
- Rorer, David, 124
- Russia, representative government in, 74; reference to, 88
- Rutledge, John, 83
- Salisbury, William, 30
- Saunders, C. G., 46; address by, 68-93
- SeEVERS, William H., 115
- Shane, John, 114
- Shays' Rebellion, 81
- Sheriff, information concerning prisoners given by, 50
- Sherman, Roger, 76
- Slavery, 67
- Sloan, Robert, 33
- Small, A. J., report by, 35, 36; paper by, 38-45; appropriation for, 136
- Smith, Joseph F., 33
- Smith, Milo P., discussion by, 149, 150, 151
- Smyth, William, 114
- South Carolina, establishment of state library in, 38

- Spain, war with, 69
Springer, Francis, 115
State Library—With Special Reference to the Law Department, The Iowa, 38-45
Statute laws, collection of, in State Law Library, 41, 42
Stockbridge, Frank Parker, 64
Stockton, Judge, 116
Stone, William M., 114
Storrs, Emory A., 120
Supreme Court of Iowa, few cases reversed on technicality by, 73; opinions handed down by, 86; freedom of, from corruption, 90, 91; salary of judges of, 116; recommendation of law relative to, 144, 149-154; recommendation relative to nomination of, 145, 194-196
Supreme Court of United States, demand for recall of judges of, 72; high character of, 91
Taft, William H., 84, 109, 129
Taney, Roger B., 8
Taxes, 172
Taylor, W. E., 31
Temple, M. L., 46
Territorial Library, 38, 39
Thompson, W. G., 114
Townseley, John S., 33
Transportation, importance of problem of, 138
Treasurer, report of, 22, 23
Trewin, James H., discussion by, 153, 191
Trimble, H. H., 114
Trumbull, M. M., 114
Turkey, representative government in, 74
Unconstitutionality of laws, 87, 88, 111, 159-162, 164-176
Valley Forge, 71
Van Law, C. H., discussion by, 152, 153, 187, 190, 195
Verdicts, recommendation of law relative to, 145, 186-192
Washington, George, 67, 68, 75, 76, 80, 81, 89, 93, 115
Wealth, desire for, 70
Weaver, J. B., 114
Weaver, J. B., Jr., report by, 37
Webster, Daniel, 165, 166
Webster, William, 33
Wills, validity of, 169, 170
William of Orange, 79
Williams, Joseph, 115
Williamson, J. A., 114
Wilson, C. J., report by, 25-35
Wilson, James, 83, 85
Wilson, James F., 124
Witte, Max E., 100
Woodward, William G., 116
Workingmen's Compensation Law, case of, 111
Wright, Carroll, biographical sketch of, 34, 35
Wright, George F., 33
Wright, George G., 33, 34, 112, 116, 117, 118
Wright, R. M., discussion by, 189
Wright, Thomas S., 118
Yale University, 74

PROCEEDINGS OF THE
IOWA STATE BAR
ASSOCIATION

*NINETEENTH
ANNUAL
SESSION*

HELD AT SIOUX CITY, IOWA
JUNE 26 AND 27, 1913





A. O. Lerner

PROCEEDINGS
OF THE
NINETEENTH ANNUAL SESSION
OF THE
IOWA STATE BAR ASSOCIATION

HELD AT
SIOUX CITY, IOWA

JUNE 26 AND 27, 1913

EDITED BY H. C. HORACK, SECRETARY

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**THE TWENTIETH ANNUAL MEETING
OF THE
IOWA STATE BAR ASSOCIATION
WILL BE HELD AT
BURLINGTON, IOWA
JUNE 25 AND 26, 1914**

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CONTENTS

	PAGE
ANNOUNCEMENT OF ANNUAL MEETING FOR 1914.....	2
ADDRESS OF WELCOME, W. L. HARDING.....	6
RESPONSE TO ADDRESS OF WELCOME, M. J. WADE.....	10
REPORT OF THE COMMITTEE ON MEMBERSHIP.....	14
REPORT OF THE TREASURER.....	16
REPORT OF THE AUDITING COMMITTEE.....	18
REPORT OF THE LIBRARIAN.....	19
REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY.....	21
REPORT OF DELEGATES TO AMERICAN BAR ASSOCIATION.....	43
REPORT OF THE COMMITTEE ON GRIEVANCES.....	48
REPORT OF THE COMMITTEE ON UNIFORM LAWS.....	53
REPORT OF THE COMMITTEE ON TAXATION.....	56
REPORT OF THE COMMITTEE ON CONSTITUTION AND BY-LAWS..	57
REPORT OF THE COMMITTEE ON EARLY BAR ASSOCIATION PRO- CEEDINGS	64
PAPER: THE LIFE AND PUBLIC SERVICE OF JAMES WILSON, WALTER I. SMITH.....	65
PAPER: THE LAW SCHOOL AND ITS DUTY TO THE STATE, D. D. MURPHY	87
ANNUAL ADDRESS: AMERICANISM AND AMERICAN JUDGES, EMORY SPEER.....	97
ANNUAL BANQUET, HORACE E. DEEMER, TOASTMASTER.....	118
LEADING CASES, W. S. WITHROW.....	120
PROGRESS AND THE LAWYER, J. A. S. POLLARD.....	127
THE PROMISE FOR THE LAWYER, S. W. LIVINGSTON.....	141
RETURNING TO FIRST PRINCIPLES, SIMON FLEISCHMANN..	150

	PAGE
LAW IN THE MAKING, J. U. SAMMIS.....	159
REMINISCENCES, FREDERICK M. HUBBEL.....	167
PAPER: CRITICISING THE COURTS, F. F. FAVILLE.....	171
PRESIDENT'S ADDRESS: REPRESENTATIVE GOVERNMENT, H. E. DEEMER	187
REPORT OF THE EXECUTIVE COMMITTEE.....	218
REPORT OF THE NOMINATING COMMITTEE.....	218
REPORT OF THE COMMITTEE ON LAW REFORM	220
REPORT OF THE COMMITTEE ON RESOLUTIONS.....	232
CONSTITUTION AND BY-LAWS.....	239
LIST OF OFFICERS AND MEMBERS OF COMMITTEES, 1894 TO 1914	248
LIST OF ANNUAL ADDRESSES, 1895 TO 1913.....	264
LIST OF PAPERS READ, 1896 TO 1913	265
MEMORANDA OF SUBJECTS REFERRED TO COMMITTEES.....	268
LIST OF MEMBERS.....	269
OFFICERS AND EXECUTIVE COMMITTEE FOR 1913-1914.....	278
INDEX	279

PROCEEDINGS OF THE
NINETEENTH ANNUAL MEETING
OF
THE IOWA STATE BAR ASSOCIATION

HELD AT
SIOUX CITY, IOWA, JUNE 26 AND 27, 1913

OPENING SESSION, THURSDAY, JUNE 26, 1913
9:30 O'CLOCK A. M.

THE PRESIDENT: The time has arrived for the opening of the Nineteenth Annual Meeting of the Iowa State Bar Association, and I ask you to come to order. Will you kindly arise while the invocation is offered by Dr. E. S. Johnson of Sioux City.

DIVINE INVOCATION

Almighty God, in whom we put our trust, we look to Thee this morning for Thy blessing. Thou hast promised that Thou wilt give unto us wisdom from on high. We have received many favors at Thy hands in the past. Thou hast been our guide and our stay. Thou hast not left us, nor forsaken us. We have sought to bring about the ends of justice in earth. Thou art the God of justice as well as the God of mercy, the God of truth, as well as the God of infinite compassion. We have sought to bring about righteousness among the people of this land and we pray that Thou wilt let Thy divine blessing rest upon us in our deliberations at this session. Let Thy blessing rest upon the President of this distinguished body and upon all his associates in this meeting. Let every member of the bar of this State put his trust in Thee, Almighty God. Let Thy blessing rest upon the homes where are left the wives and children. Let Thy arms be around

about them, our loved ones, as a wall of defense, and keep all evil from them. Let Thy blessing rest upon our great country. We bless Thee that we are privileged to live and work in so great a Republic. We thank Thee that Thou hast brought this Nation into a large place among the nations of the earth. Thou hast given unto them, the servants who are represented in this hall this morning, wisdom to help bring this great country to its present position. We beseech Thee, bless Thy servants in whatever profession they may find themselves, and especially Thy servants who have espoused the profession of the law, which seems to lead to so many positions of trust and offices at the behest of the people, that they may constantly go onward toward the ideals of righteousness and purity in all the land. Let Thy blessings rest upon our State, upon the Governor of the State and the Lieutenant Governor and all who have charge of the affairs of the Commonwealth. We pray that mercy and truth may ever distinguish our citizenship and that our Commonwealth may never take a backward step in any moral cause. Keep us and lead us into the heights of Thine own designs for the sake of Him who taught us when we prayed to say:

Our Father which art in Heaven, hallowed be Thy name. Thy kingdom come, Thy will be done, in earth as it is in heaven. Give us this day our daily bread, and forgive our trespasses as we forgive those who trespass against us. And lead us not into temptation, but deliver us from evil: for Thine is the kingdom, and the power, and the glory, forever. Amen.

THE PRESIDENT: On behalf of Sioux City and Northwestern Iowa, Lieutenant Governor W. L. Harding will deliver the address of welcome.

ADDRESS OF WELCOME

Mr. Chairman, Members of the Bar of Iowa and neighboring States: It is always a distinguished pleasure and honor to represent Sioux City on any occasion. It is a double pleasure, when we can invite, or rather welcome the Iowa State Bar Association to Sioux City.

You were here some few years ago and we knew at that time

that at any time the invitation was extended to return, you would come back, and we are glad that you are here to-day. We know that you are glad that you are here. Somebody suggested that we gave you a very warm reception. The reason for that is that our chief occupation out here is raising corn and converting it into bacon, and in order to do that, we have to have this warm weather. You know, that a lawyer, if he is not willing to accept a hot place now, sometime or other will have to get ready for it, and we know of no better place for you to get ready for that than here in Sioux City.

I accepted this opportunity to speak to you, and I had a reason for it. I wanted, first, to find out who composed the Iowa State Bar Association. I looked over the list of names, and found there were men on the list who claimed to be professors, and there were also men on the list who are judges, both of the Supreme Court and District Courts, and the Justice Courts, and you know there is something peculiar about that, that the people's court is called the justice court, and distinguished men have served in that position. Then I also found in the list some ex-judges. Now, it is nice to be associated with these distinguished men, on a common level. A Supreme Judge can be called "Bill" to-day and tomorrow, if his name happens to be Bill. The District Judge, you can call him by his first name, because he is on a level with the lawyers, attorneys, and counsellors, and all the titles some young fellows put on their stationery.

Sioux City does not boast of being a seat of learning in this great State. We permit Iowa City to have that title; but we do claim that we have some excellent colleges and schools in Sioux City which are worthy of your attention. We do not claim to be the Parlor City of Iowa; we leave that to Cedar Rapids; but we do claim that we have beautiful homes and streets and all of the things that go to make a city that is worth living in. We do not claim that we have the most beautiful scenery in all the world. Dubuque, Davenport, Burlington, and Keokuk, down along the Father of Waters, claim they have the most beautiful scenery in the world, and we are willing to concede that. Yet, if you will take the time to go out and look across the Sioux River, across the prairies of South Dakota, you will no doubt be impressed

with what inspired the Indian in the early days. As I said before, our chief occupation is raising corn and then converting that into bacon to alleviate the hunger of the world. We have been doing that job in fine shape.

It is a great thing to be mixed up with these judges when they are down from off the pedestal. And the ex-judge,—they tell a story about the ex-judge. A colored man was arrested. His friend said to him that he had to have a lawyer in this case and that he had better get Judge So-and-So. Rastus said: "No judge can practice in the court, you must be mistaken, sah." His friend said: "They called him judge." Rastus said: "Dat can't be possible; dem ex-judges are dead." "How is that?" said his friend. Rastus replied: "Dere is only one way you can make an ex-judge, and dat is to hab him resign or not be re-elected; whenever dey get in dey is always relected." But his friend said: "This judge did resign." To which Rastus replied: "Then he is a mighty smart man or a damn fool."

To see the judges mixing around with the lawyers is a great thing. We are glad you have come to Sioux City. I have seen some claim in an interview in a newspaper that lawyers are progressive. This is a progressive community. Only last year a fellow from the sand hills in Nebraska came to our State Fair here. He was standing along the pike, when an automobile came along and knocked him over. His friends put him on his feet again, when suddenly a motorcycle came along and ran over him. One of his friends said to him: "What are you standing around this way for; don't you know any better?" He replied: "I didn't know the darn thing had a colt."

The lawyer is the great burden bearer of the world. Clients pour their troubles into his ear after they have tried everything to keep out of them, and the lawyer will as best he can try to get the obstacles out of the way. I understand you are here for the purpose of discussing the great subjects that come before the people of the country. The lawyer has settled most of these problems. There are communities in Iowa where a lawyer cannot be elected to the Lower House; they always send him to the Senate, and it is the Senate that really makes the laws, and it is largely composed of lawyers.

We are glad you are here because of what you stand for in the professional and business world. The lawyer is no longer the man who puts himself away from the business life of the community; he is now a part of it, and is really carrying the great burdens of the country. I know there is some criticism because of the stand lawyers take, because of big business, and trying to keep their clients out of the penitentiary. It is well to keep them out of the penitentiary, because I understand it is not a pleasant place to spend life. It is very seldom a lawyer goes to the penitentiary; that shows he is an educated man, and we are glad you are here, because you are educated men.

Sioux City has many charms. We are not going to tell you about them this morning. We want you to find them out. The committee is trying to give you something good. We are going to have automobiles stationed around the hotels, and you are at liberty at any time to get in and tell the driver what you want to see, and you will be taken anywhere. Sioux City extends clear down to Des Moines, and Cedar Rapids, Iowa City, and over to the Rocky Mountains. We have beautiful scenery, if that is what you want. We have the river out here, where you can go in bathing, if that is what you want; or, you can go boating; or, if you do not care for such a strenuous occupation, our good friend, Judge Jepson, is a good angler, and he will dig the worms for you and show you where you can sit in the shade and not be bothered by a nibble even. If you are thirsty, you can have lemonade, buttermilk, or barley juice, or anything you want. We throw the doors of the city wide open. I am not the Mayor of the town, but I think I have some influence with the police judge. I have sometimes been turned down; but for the next two days, I will volunteer to see to it that no visitor is called up in police court. I also pledge you that the best counsel in the State will appear for you. Judge Wade has volunteered. We want you to have a good time. Take off your coats; go where you want to go, and if there is anything you don't see, ask a member of the local bar association, and it will be handed to you. Judge Wade is going to tell you some funny stories and will make you feel still happier. I know you must be happy now, and I will defer to Judge Wade to put on the finishing touches. Gentlemen, I thank you.

THE PRESIDENT: Representing the Iowa State Bar Association, Judge M. J. Wade, of Iowa City, will respond to the address of welcome.

RESPONSE TO ADDRESS OF WELCOME

Gentlemen of the Iowa State Bar Association: I assure you that it gives me great pleasure, in behalf of the Iowa State Bar Association, to extend our hearty thanks to the Lieutenant Governor, the Bar of Sioux City, and the people of Sioux City for this eloquent welcome which we have received this morning. I am sure we have not only received a welcome, but we have received many suggestions from the Lieutenant Governor which may be of value to us in our session here.

He tells us that we can call judges "Bill". Now, that is not a circumstance to what some fellows call them at times. I was talking to Governor Burke the last time I was in Washington. He told me that a lady, whose husband had recently been appointed to some position in Washington, and who was trying to adjust herself to the social usages of the city, spoke to him about how she should really address a Congressman; whether to say, Mr. Congressman, or Mr. Representative, or what. She spoke to Mr. Burke about it, and asked him, "What do they call these Congressmen; how do they address them?" John thought a moment, and then said: "Now, Mrs. Blank, I will tell your husband, and he can tell you."

The Lieutenant Governor also tells us that up in this country they send the best lawyers to the Senate, which reminds me of what occurred down in Washington, when Judge Smith used to be there. A member of the House was sleeping very peacefully and calmly, with that conscience a member of Congress only knows. He was awakened by his wife, who was in great fright, exclaiming, "There are thieves in the house." He said: "There are a damn sight more in the Senate than in the House."

I assure you it is a pleasure for all of us to be here. I remember very distinctly the splendid welcome and the splendid time we had here many years ago. Of course, all that were here that time are not here to-day, some of them have passed the Great Divide, and as to some of them the Statute of Limitations has not

yet run, so they are not back. I know from my own experience, those who can come will be here at this meeting, because of the splendid reputation Sioux City has for hospitality. You know, Sioux City is not the best town in the State of Iowa. It is, except one, Iowa City. But Sioux City is a very lucky city; it just escaped being in South Dakota, just by a few feet, and if that isn't lucky for a city, I do not know what fortune would be. But, they have really the great Western heart here, the true spirit of hospitality. You know, it is not so many years ago since this was really a great prairie, with here and there a settler trying to establish a home for his family. And when we look back to those early days we find a spirit of hospitality, such as we find in no other generation. Many of those present here can remember those good, old days,—when every home out here on the prairie had the door wide open, not to friends and not to those of social position, but to every man traveling along life's highway who felt like stopping in front of the door and tying up his team and walking into the open door, seating himself at the table, as welcome as the best friend the family ever had. All that was known of him was that he was a man out here in the great west, traveling to a new home.

And so the spirit of hospitality of the older days still lingers in this section of the country, and I am satisfied when we close this session and go back to our homes and offices, that none of us will feel like the fellow I saw coming out from Washington a short time ago. He was absolutely disgruntled, dissatisfied, and in despair. He had gone down there about the time of the inauguration to take a position in the Cabinet. He waited until about six weeks ago. He was not called into the service, and he was thoroughly disgusted. He said: "I never knew before why Washington was called the City of Magnificent Distances; it is so damn far between what you go after and what you get. I will never go back, as long as I live." I said, "You remind me of a fellow in Northern Iowa, an old Irishman who decided to go back to the old country to spend the evening of his life. He sold his property and went back to the old home. It was no longer the old home. The old friends were gone—sleeping in God's acre somewhere. The atmosphere was not the atmosphere of

America, and it was not three months until he was heartily homesick, packed his trunk and started back. As he came into the New York harbor, trying to catch a sight of land, the first thing that came upon his vision was the Statue of Liberty. As he saw it, he took off his hat and said: 'Good morning, Madam, I am awfully glad to see you; and if you ever see me again, you will have to turn around.' " I do not believe any one will leave here with that kind of a feeling, and I am satisfied we will all be glad to come back to this beautiful city which has made such wonderful strides towards a better civilization, a stronger hospitality, and a greater commercial activity.

Of course, we would all be glad to go fishing, and there are some who haven't come yet, who may want to accept the suggestion of the Governor to investigate the beauties of this barley juice he spoke of. Of course, we all need an outing, that is, the lawyers do. These officials, such as the Lieutenant Governor, judges, and men holding public office, of course, they do not need the rest; they have too much of it now. A fellow down in Washington asked a man who had held office there for sixteen years under a Republican administration, if there was very much work about these public offices. He says, "No, not after you get them."

I know this meeting will be entirely removed from the atmosphere of politics, and therefore there is more prospect of rest. But we are not here entirely to rest, we are here for a serious purpose. I think every lawyer here realizes that we are living in a time of great moment to the American people. I think we all realize that there never was a time in the history of this country when it was so important to have the American people educated up to the great thought expressed by Marshall, that this is a government of law and not of men. I do not think there ever was a time when conditions with which we have to deal were of such great importance to the future of this country. We are living in a time when the people, in some way, have had their suspicions aroused as to the bar and the courts. The demand for the recall of judges, the demand for the recall or review of judicial decisions, comes from men who are in earnest and honest in their convictions but who have been misled into the belief that there is

corruption in our courts which does not exist, and that there is hypocrisy at the bar which never was known.

The bar of this country has a duty to perform, not for the sake of the lawyers who are members of the bar, but for the sake of their country, because they are in a position in which they know the truth and in which they can accomplish much. They have a great responsibility in these times to meet the problems which are disturbing our civic life. It will not do longer to laugh at the blunders of lawyers who are not capable to practice law, but who have a certificate from the State sending them out to the people, asking for their confidence in their ability and integrity. It will not do longer to say, "I am sorry," when some man who has been commissioned by the State to go out and handle the business of men or women, proves recreant to his trust. Mere expression of sympathy for his clients will no longer do. The Bar must wake up and take an active interest in ridding the profession of the incompetent as well as the men who are unfitted to represent the profession in the great problems which come to it, and if the bar does not do so, then it must sink to the level of those who drag it down, instead of rising to the height of those who honor the Nation in their profession.

I am satisfied that every member of this bar who is here—while we all take advantage of every opportunity for recreation and enjoyment, while we will visit every green spot and every shaded nook, except the jail, and while we will taste of every single good thing held out to us, except the bacon, we still are here for business and I hope that every member will do his best to make this meeting of this Bar Association one of the best in the history of the Association.

The President says that this is the Nineteenth Annual Meeting. How the years fly! I can remember, young as I am, the day we formed this Association. I can recall the faces of many earnest men that were there then,—men who have set a high mark in our profession, men who have passed away and answered the call of Nature and God, and many of us who are younger are taking their places. These men who sat around the table there in Des Moines when this Association was organized felt that it was going to accomplish a great purpose for the bar and the

people of the State. I believe it is going to. I want to see the time in this State when the Bar Association will have a thousand men sitting in front of the chairman when the meeting is called to order. I want to see more professional enthusiasm, more pride, more interest in the general things with which we deal. I want to see every member of the bar of Iowa who has the true spirit in his heart, join this Association and be a part of it, and then when a welcome comes from a splendid people, as we have here in Sioux City, the applause will come responding back from every city and county in the State, and even from the remote corners of Des Moines.

THE PRESIDENT: The reports of the various committees are now in order. We will first hear the report of the Committee on Membership, by Mr. O. D. Nickle, Chairman.

REPORT OF THE COMMITTEE ON MEMBERSHIP

To the Iowa State Bar Association:

Your Committee on Membership present herewith the written application, in due form, of the following attorneys of this State, for membership in the Iowa State Bar Association, and recommend the acceptance of such attorneys for membership in the Association:

R. B. Alberson, Des Moines.
David Algyer, Paullina.
H. A. Ambler, Burlington.
S. G. Bammer, Estherville.
Edgar T. Bedell, LeMars.
Harold L. Beyer, Grinnell.
Geo. H. Bliven, Sioux City.
W. D. Boies, Sheldon.
R. W. Boyd, Malcom.
Charles C. Bradley, LeMars.
George E. Brammer, Des Moines.
E. R. Cadwell, Dunlap.
Frank J. Capell, Council Bluffs.
Chas. C. Clark, Burlington.
Geo. B. Clark, Oakland.
A. D. Collier, Sioux City.
Byron M. Coon, Estherville.

E. M. Corbett, Sioux City.
LaMonte Cowles, Burlington.
John E. Cross, Newton.
Roy E. Cabbage, Des Moines.
John Cunningham, Humboldt.
Aymer D. Davis, Eldora.
John C. DeMar, Des Moines.
T. E. Diamond, Sheldon.
Henry W. Dunn, Iowa City.
Earl Edmunds, Correctionville.
E. C. Eicher, Burlington.
Lee W. Elwood, Elma.
O. W. Emmons, Manning.
E. P. Farr, Sioux City.
Sylvester Flynn, Eagle Grove.
Samuel B. Givin, Adair.
Geo. W. Graesser, Des Moines.

- Homer W. Green, Cherokee.
T. F. Griffin, Sioux City.
Oscar Hale, Wapello.
John J. Halloran, Des Moines.
C. C. Hamilton, Sioux City.
Harry N. Hansen, Des Moines.
Paul M. Hatfield, Sioux City.
W. A. Helsell, Odebolt.
B. F. Hickman, Sidney.
Edward L. Hirsch, Burlington.
A. H. Hoffman, Des Moines.
F. L. Holleran, Clinton.
Fred S. Holsteen, Burlington.
John W. Hospers, Orange City.
J. W. Hubbard, Sioux City.
Lyle Hubbard, Sioux City.
N. M. Hubbard, Jr., Des Moines.
F. M. Hubbell, Des Moines.
E. P. Hudson, Des Moines.
Robt. Hunter, Sioux City.
Louis G. Hurd, Dubuque.
Foster G. Iddings, Sioux City.
A. W. Johnson, Sioux City.
Thos. W. Keenan, Shenandoah.
Geo. M. Kellogg, Jr., Sioux City.
George W. Kephart, Sioux City.
Gerrit Klay, Orange City.
P. H. Konzen, Sioux City.
F. W. Lehmann, Jr., Des Moines.
Andrew G. Lehr, Sioux City.
W. S. Lewis, Glenwood.
F. W. Lohr, Sioux City.
T. B. Lutz, Mapleton.
Willard H. Lyon, Knoxville.
Arthur C. McGill, Sioux City.
F. J. McGreevy, Ackley.
E. W. McManus, Keokuk.
Guy E. Mack, Storm Lake.
Chas. S. Macomber, Ida Grove.
C. B. Metcalf, Sioux City.
C. Mosher, Walnut.
C. Mosher, Jr., Walnut.
David Mould, Sioux City.
J. C. Murtagh, Waterloo.
Lewis J. Neff, Walnut.
Martin Neilan, Sioux City.
Carl H. Neiman, Des Moines.
Miles W. Newby, Onawa.
James B. Newman, Cedar Falls.
Maurice O'Connor, Fort Dodge.
J. M. Otto, Iowa City.
Sam Page, Sioux City.
J. H. Patton, Grinnell.
Ben P. Poor, Burlington.
John F. Porterfield, Shenandoah.
Clifford Powell, Red Oak.
John C. Power, Burlington.
J. C. Pryor, Jr., Council Bluffs.
W. S. Randall, Hawarden.
T. M. Rasmussen, Exira.
Ray E. Reike, Kingsley.
F. H. Rice, Sioux City.
Will F. Riley, Des Moines.
C. H. Rinker, Anthon.
A. G. Rippey, Des Moines.
Loren Risk, Waterloo.
J. O'Donovan Rossa, Sioux City.
B. V. Sager, Sioux City.
L. H. Salinger, Carroll.
J. U. Sammis, Sioux City.
A. B. Schuets, Des Moines.
M. L. Sears, Sioux City.
John J. Seerley, Burlington.
Marion B. SeEVERS, Des Moines.
W. C. Shepard, Allison.
Frank Shinn, Carson.
Deloss P. Shull, Sioux City.
Kenneth G. Silliman, Sioux City.
Howard F. Sims, Sioux City.
Edgar A. Smith, Whiting.
E. G. Smith, Sioux City.
Harry S. Snyder, Sioux City.
Charles M. Stilwill, Sioux City.
A. C. Strong, Sioux City.
G. T. Struble, Sioux City.
Frank Tamisiea, Missouri Valley.
Anthony TePaske, Sioux Center.
Geo. W. Thomas, Red Oak.
Frank E. Thompson, Burlington.
Henry Thunen, Davenport.

H. E. Tullar, Waterloo.
 Henry F. Wagner, Sigourney.
 A. O. Wakefield, Sioux City.
 Clement J. Welch, Muscatine.
 B. L. Welch, Knoxville.

Ellis E. Wilson, Waterloo.
 Frank B. Wilson, Greenfield.
 Frank Wisdom, Bedford.
 W. S. Withrow, Mount Pleasant.
 John E. Williams, Waterloo.

Respectfully submitted,

A. H. HOLLINGSWORTH,
 W. M. DAVIS,
 E. H. MCCOY,
 A. L. RULE,
 C. E. WALTERS,
 T. J. BRAY,
 CLIFFORD V. COX,
 V. R. MCGINNIS,
 HENRY PETERSON,
 THOMAS MCCARTY,
 O. D. NICKLE,

Committee.

Upon motion duly made the report of the Committee on Membership was received and placed on file.

SENATOR C. G. SAUNDERS: I think the Committee is to be congratulated upon the success of their efforts. This is one of the largest lists we have ever had presented, and I move you that the persons whose names were read by the Committee be now elected as members of this Association.

The motion was duly seconded and unanimously carried.

THE PRESIDENT: The next report will be that of the Treasurer, Mr. Frank T. Nash, of Oskaloosa.

TREASURER'S REPORT

From June 27, 1912, to and including June 24, 1913

RECEIPTS

Balance on hand at last annual report	\$ 585.91
Received from Membership Fees	306.00
Received from Annual Dues	1023.50
 Total Receipts	 \$1915.41

DISBURSEMENTS

H. C. Horack, Secretary, expenses, postage, etc. (Order No. 15)	\$ 23.00
H. C. Horack, salary for 1911-12 (Order No. 13)	200.00
William Benwick Riddell, railroad fare and expenses (Order No. 16)	81.29
A. T. Cooper, expenses for Membership Committee (Order No. 17)	25.48
A. T. Cooper, expense of Membership Committee (Order No. 18)	12.81
J. P. Blaise, reporting proceedings of Iowa State Bar Association, 1912, and making transcript thereof (Order No. 19)	78.88
A. J. Small, compensation ordered at last meeting (Order No. 14)	100.00
Dan E. Clark, for making index for proceedings for the year 1912 (Order No. 20)	15.00
H. C. Horack, Secretary, postage, supplies, etc. (Order No. 24)	27.02
Economy Advertising Company, for printing proceedings for 1912, etc. (Order No. 22)	469.57
Economy Advertising Company, printing, supplies, etc. (Order No. 23)	34.62
Republican Printing Company, stationery and printing (Order No. 21)	25.75
John T. Ries, supplies (Order No. 25)	8.75
Frank T. Nash, Treasurer, postage, printing, etc. (Order No. 26)	41.30
H. E. Deemer, printing, postage, etc. (Order No. 27)....	6.50
United States Express Company, express charges on 1912 Proceedings (Order No. 28)	69.42
Republican Printing Co., printing, etc. (Order No. 29)	75.63
H. C. Horack, stenographer's work, postage, expenses, etc. (Order No. 30)	69.98
H. E. Deemer, expense, postage, etc. (Order No. 31)....	6.05
Citizen Printing Co., supplies, etc. (Order No. 32).....	6.00
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Total disbursements	\$1377.05
Balance on hand	538.36
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Total	\$1915.41

The amount received for membership fees is far smaller than it would have been had those received into membership last year paid their fees, but on examining my books I find that at least

thirty-nine who were received into membership last year have up to date failed to pay their membership fees. In view of our constitutional provision on this point under which the membership fee is required to accompany the application for membership I would hereafter suggest that that rule be complied with.

Respectfully submitted,

FRANK T. NASH, *Treasurer*.

Upon motion duly made the report of the Treasurer was received and placed on file.

THE PRESIDENT: According to the Rules, the Auditing Committee was appointed ten days ago to audit the books and accounts of the Secretary and Treasurer, Major John F. Lacey is Chairman of that Committee. We will now hear that report.

REPORT OF THE AUDITING COMMITTEE

MAJOR LACEY: The Auditing Committee have gone through the accounts and vouchers of the Treasurer. There are three unpaid vouchers in the hands of the Secretary for delivery to the parties who are entitled to them. Those checks have not yet been endorsed and cannot be endorsed by anybody except the parties to whom they are issued. With the exception of those three vouchers everything has been paid and returned. Those vouchers now stand out, signed by the President and Secretary of the Association. We recommend that the account be passed and approved. This leaves a balance of five hundred and thirty-eight dollars and some cents in the hands of the Treasurer at that time. That does not include the receipts coming in during the present meeting.

THE PRESIDENT: You have heard the report of the Auditing Committee. What will you do with it?

Upon motion duly made the report was adopted.

THE PRESIDENT: As Mr. Small, our Librarian, was not able to be present at this meeting, he has sent his report and I will ask the Secretary to read it.

REPORT OF THE LIBRARIAN

As your librarian, I have considered well the interests of the Association in the care and distribution of the proceedings in my possession. I received the proceedings for 1912 from the secretary and have sent a copy to all the State libraries, the larger law schools and Bar Associations throughout the country, and to some of the secretaries of the State Bar Associations; in fact, to all those whom I knew would care to receive them. I am receiving on exchange account the proceedings from almost all the different Bar Associations, including the American. Quite a number of the States follow the example of Iowa in making the State Law Librarian the librarian of the State Association, and through that source exchanges are made and proceedings received. This is most desirable, in that it establishes a permanent library for the Association, and the librarian can use the exchanges to a good advantage in securing the proceedings from other States, making them accessible for the profession and the laity.

Of the reprints of 1874-1881, I have sold three copies at \$1.00 each. I have also sold reports of the Association to the amount of \$6.50, and herewith give a financial statement.

Received from sale of Iowa State Bar Association Proceedings
(Early, 1874-1881)

1912

Sept. 24, Banks Law Pub. Co., New York City, 1 volume\$1.00

Oct. 3, E. B. Adams, Social Law Library, Boston 1.00

1913

Feb. 24, J. H. Arnold, Law School Harvard University, Boston .. 1.00

\$3.00

(Proceedings, present)

1912

Oct. 19, Lewis Miles, Corydon, 1895-1906, 12 vols., 50 cents each, \$6.00

Nov. 25, E. J. Williams, New York City50

\$6.50

Total receipts \$9.50

Paid out

1912

Oct. 24, Freight on proceedings (early and 1912)\$1.06

Oct. 24, Drayage on 3 boxes proceedings 1.40

Postage, for sending out proceedings 1911 and 1912 7.04

Total expenditures \$9.50

As there will be a gradual demand for the reprints as well as the regular reports, it is desirable to conserve the distribution. Libraries are increasing, Bar Associations are being organized, and future generations should be taken into account.

The State Law Library is increasing in number of volumes and for completeness and efficiency will rival almost any other library in the country. It is the policy of the trustees to purchase all recent publications and in every way keep the library up-to-date. Out-of-print and rare volumes and sets are being filled, thereby making the library of still greater usefulness to the legal fraternity of our State. Recently an exchange of statute laws was effected with the Kingdom of Belgium for those of Iowa. Negotiations are now under way for an exchange of laws with the imperial government of Germany. The library is enlarging its scope of usefulness by entering into exchange with countries other than English speaking.

These words concerning the State Law Library may seem out of place in my report as Librarian of the Bar Association; but, what is desirable for one, is to the advantage of the other, and it is the wish of the trustees and the librarian to keep the attorneys of our State advised as to the progress of our Law Library, constantly reminding them that the library is for practical use, and that the bench and bar of the State are most cordially invited to use it freely.

Respectfully submitted,

A. J. SMALL, *Librarian.*

THE PRESIDENT: You have heard the report, and if there is no objection, it will be received and placed on file.

The next will be the report of the Committee on Legal Biography.

REPORT OF THE COMMITTEE ON LEGAL BIOGRAPHY

To the Iowa State Bar Association:

Your Committee on Legal Biography submits the following report: During the past year deaths have occurred in the legal profession in the State of Iowa as follows:

Charles H. Amos, Knoxville.	Geo. C. Hull, Boone.
Henry A. Arp, Davenport.	Carl F. Hass, Davenport.
C. M. Brown, Sigourney.	Benj. W. Lacy, Dubuque.
James D. Butler, Marengo.	Daniel A. Long, Waverly.
Jerome D. Carskaddan, Muscatine.	J. T. Lyon, Dubuque.
A. F. Call, (late of) Sioux City.	John Lindt, Council Bluffs.
Wm. J. Clair, Iowa City.	Thos. H. Milner, Belle Plaine.
Thomas C. Dawson, (late of) Council Bluffs.	Edward Mills, Red Oak.
George E. Draper, Sidney.	Edward T. Morris, Des Moines.
Crawford F. Davis, Bloomfield.	Julian Phelps, (late of) Atlantic.
Dwight F. Gibson, Waverly.	C. L. Poor, Burlington.
L. E. Fellows, Lansing.	Robert W. Ratcliff, Fairfield.
John W. Harvey, Leon.	P. A. Sawyer, Sioux City.
Christian C. Hedges, Marengo.	Isaac S. Struble, Le Mars.
H. M. Henley, Davenport.	Edward T. Sullivan, Creston.
R. M. Hunter, Sibley.	John J. Tolerton, Cedar Falls.
E. H. Hubbard, Sioux City.	W. W. Woodin, Des Moines.
Henry W. Hull, Madrid.	W. H. Wallingford, Des Moines.
	John L. Young, Leon.

Attached to this report and as part thereof will be found a very brief sketch of the life of each of our brother lawyers named above. Through the press and by the action of committees in the several counties of their residence permanent record has been made of their lives, their attainments, public service, and private and professional character. It is to such records chiefly that the historian of the future must turn but it is also proper that this Association preserve upon its files some expression of our consciousness of the passing of these men who have worked side by side with us in fulfilling the exacting demands of our profession. Some of them have lived useful but quiet lives, secluded and remote, their activities apparently touching immediately but the limited circle of a rural neighborhood; others full armored and eager for the fray were ever in the front rank engaged in strenuous legal conflict, taking and giving hard blows—resourceful, persistent, courageous, and constructive, they have created last-

ing precedent and enduring legal history. Many coming to the State as part of that marvelous home-loving, home-seeking generation of the early fifties and sixties helped to lay firmly and well the foundations of our constitutional system. Such lived to see the State become rich and powerful by reason of their labors and have blessed and enriched the life of the Nation with the strong and sweet qualities and spirit of a time less complex than our own, more elemental and nearer to the soil. And again, there are those who, listening to the siren voices that ever haunt the hearts of men of whatever profession, have wandered into other fields and in journalism or diplomacy or statecraft have swayed public sentiment, untangled the snarls of our international relations or left in the statutes of the land the lasting impress of their conception of a just principle of government. In all your committee has found illustration and confirmation of the greatest fact in American life, namely, the wonderful opportunity that has inhered in our national history and is our greatest democratic tradition—young men from some remote farm or workshop or from the peasant villages of the old world, finding themselves intellectually in the free air of American life and under the spur of ambition and an equal opportunity rising to lives of professional distinction and enduring service. It would be a pleasure to not only name these men but to recount at length their character and achievements but we can here but note their passing and give brief expression to our love for them and our pride in the honor they have reflected upon our common profession and our beloved State.

In the transition period in which we now live, the relation of the lawyer to the stability of our institutions is more important than ever before. Practiced in those judicial qualities of mind that are the direct product of the training of the lawyer he is peculiarly fitted to preserve, while marching onward with the army of progress, that sense of equal justice and calm inquiry without which Might usurps the seat of Right and constitutional government becomes a farce. As your committee has examined into the lives of our brother lawyers lately deceased we have found there all those qualities of mind and heart that have given a proud distinction to our profession and strength and virtue to

the life of the State. We salute them as vital factors in a sane development of our institutions. We shall hold them in sweet remembrance until we shall join them in what someone has beautifully termed "that well known rendezvous Eternity."

JAMES B. WEAVER,
W. R. LEWIS,
C. J. WILSON,
Committee.

CHARLES HESTWOOD AMOS, 1869-1913

Born in Union Township, Marion County, Iowa, Feb. 25, 1869; died at Knoxville, Iowa, Jan. 18, 1913. Attended public school in Chicago, graduating from Lake High School. Took three years in Liberal Arts department at University of Michigan; graduated in 1892 at Union College of Law, now Law Department of Northwestern University, earning his way through school by work in the claims department of the Nickel Plate Railroad. Began the practice of law in Chicago where he remained for three years. Following the death of his father removed with his mother in 1895 to Knoxville, Iowa, where a partnership was formed with W. A. Stone. Later formed a partnership with Hon. L. N. Hays which lasted until the latter was elected to the district bench. Became a member of the firm of Amos & Van der Ploeg which continued until his death. Prominent in Masonic Order, becoming a Master Mason at twenty-one years of age and became a Royal Arch Mason, Knight Templar, and Noble of the Mystic Shrine. Served as High Priest for Tadmor Royal Arch Chapter and Patron of the Eastern Star Chapter. In March, 1912, became a 32d degree Mason. Was well known in legal and political circles throughout the State. Was a candidate for Attorney General on the Democratic ticket in 1911. He was a man of unusual ability, a commanding presence, an orator of power, endowed with a liberal education and the broadest views. He died at the outset of a career that promised great distinction. The resolutions of the bar of Marion County contained the following statement with respect to his character: "It is our deliberate judgment that he had in a prominent degree every quality of manhood, knowledge, ability, and eloquence necessary to make an officer of this court

of the very highest type and that his great powers were never consciously exercised for an injustice or wrong."

HENRY A. ARP, 1869-1912

Born near Davenport, Iowa, May 3, 1869; died Nov. 11, 1912, at Davenport. His boyhood was spent on the farm. Attended school in the country until sixteen years of age. Entered Duncan's Business College at Davenport and soon afterward entered the State University. Graduated from the Law Department in 1896. Located in the practice at LeMars, 1896-8, when he returned to Davenport where he remained in the practice until his death.

JAMES D. BUTLER, 1847-1912

Born June 9, 1847, in Pittsford, Vermont; died Nov. 5, 1912, at North English, Iowa. Passed his youth in Vermont. Enlisted in the Civil War in the 9th Vermont Volunteers at fifteen years of age. Was captured at Harper's Ferry, and after exchange served through the war. Married in Vermont, from which marriage there were four children, two of whom died in infancy, the mother dying later. In 1881, he married a second time in Saratoga, N. Y., and in 1882 removed to North English, Iowa, where he entered upon the practice of his profession. There were eight children of this marriage, six of whom with the widow survive the decedent, namely, James D., of Sioux City, Frank P., Laura E. R., Helen C., Mary S., and William J. B. He was active in the Masonic Order and greatly interested in the subject of education, serving on the school board for several years. In politics he was a Democrat. Was at one time Democratic candidate for Lieutenant Governor. He was prominent as a lawyer and as a citizen and highly respected wherever known.

C. M. BROWN, 1845-1913

Born in Knox County, Ohio, Nov. 9, 1845; died May 8, 1913, at his home in Sigourney, Iowa. Removed from Ohio to Muscatine, Iowa, in 1868; graduated from the State University in 1871. Located in Sigourney in the practice of law the same year.

Married in 1874 to Miss Flora Sampson. There were four children, namely, Mrs. Eunice Bracken of Indianapolis, Iowa, Millie Brown, Chicago, Roy R. Brown, Washington, and Miss Helen Brown, Sigourney. A member of the Presbyterian Church in Sigourney since 1893, on certificate from the Episcopal Church at Muscatine. Was a ruling elder in the Presbyterian Church at Sigourney from 1907 to the time of his death. Was a member of Company A, 102nd Ohio Volunteers, serving to the close of the war. Elected in 1881 to the State Senate, serving four years. Was prominent in his profession, in the church, and in all the life of his community. Engaged in the practice of law in Keokuk County for more than forty years.

WILLIAM J. CLAIR, 1866-1912

Born near Iowa City, Iowa, Sept. 21, 1866; died at Iowa City Nov. 29, 1912. Spent the greater part of his life in or near Iowa City until he was admitted to the bar. He graduated with the class of 1888 from the College of Law of the State University of Iowa, and thereafter spent about fifteen years in the practice of his profession in Omaha, Neb. He then returned to Iowa City where he remained until his death. He was unmarried and was a devout member of the Catholic Church. During the last few years of his life Mr. Clair suffered much from physical ailments and the working out of legal problems was in a way his one pastime, and his keen mentality tended in a large measure to offset the drawbacks of physical misfortune.

ALBERT WOODWORTH CALLENDER, 1839-1913

Born at Lucerne, Pa., December, 1839; died at Clarion, Iowa, January 24, 1913. Removed from Pennsylvania to Illinois when fifteen years of age. Removed with his parents in 1856 to a farm in Chickasaw County, Iowa, where he engaged in farming and school teaching. At twenty-seven years of age he entered the Upper Iowa University, remaining two years; studied law and was admitted to the bar shortly afterward and entered on his profession at Fayette, Iowa. Continued in the practice of his profession until the time of his death which occurred at the home of a brother, E. M. Callender, at Clarion, Iowa.

JEROME CARSKADDAN, 1829-1912

Born near Seneca Falls, N. Y., Nov. 6, 1829; died Oct. 23, 1912, by drowning in the Mississippi River at Muscatine. Graduated from Hamilton College, N. Y., in 1851, being a classmate of Charles Dudley Warner, between whom and Mr. Carskaddan a warm friendship existed. Studied law in the office of Sloan & Shoecraft, Oneida, N. Y., and was admitted to the bar at the June term of the Supreme Court of New York in 1853. Removed at once to Muscatine, Iowa, where he continued to practice law until the time of his death. In January, 1854, he was one of the purchasers of the *Democrat-Enquirer* which he edited and published for two years. He formed a partnership with E. H. Thayer in 1856, and was chosen prosecuting attorney in 1857 and served two years. Served as county judge 1861-64. Formed a partnership in 1863 with DeWitt C. Richman, continuing fifteen years. Practiced alone until 1896, when a partnership was formed with Wm. D. Burk. In 1906 I. S. Pepper joined the firm. On the death of Mr. Burk in 1908 the firm became Carskaddan & Pepper. Mr. Carskaddan and his partners have represented the Chicago, Rock Island & Pacific Ry. Co. in Muscatine since 1863. He was president of the Muscatine Savings Bank, now First Trust & Savings Bank, for a number of years. Was an influential Republican. Drew the platform of the first Republican convention held in Muscatine County. Cast his first vote for Fremont and Dayton in 1856. Married May 1, 1854, to Miss Marilla Brown of Morrisville, N. Y. To this marriage two children were born, Paul born April, 1861, and died by drowning in 1875, and Gertrude, now the wife of Wm. F. Bishop. Judge Carskaddan was Dean of the Muscatine bar at the time of his death and was universally respected for his high character and ability.

ASA F. CALL, 1856-1913

Born at Algona, Iowa, May 20, 1856; died at Carona, Cal., April 1, 1913. The eldest son of Asa C. Call, founder of Algona. Admitted to the practice of law in the courts of Indiana in September, 1876, and the courts of Iowa in 1877. Removed to

Sioux City in 1889. Became a member of the firm of Joy, Hudson, Call & Joy, later Wright, Call & Hubbard. Removed to California in 1907 where until his decease he acted as counsel for the California Fruit Exchange and its various subsidiary organizations. While residing in Algona Mr. Call was attorney for the Chicago & Northwestern Ry. Co., and while at Sioux City for the Chicago, St. Paul, Minneapolis & Omaha and Great Northern Railways and the Chicago, Burlington & Quincy. Was very extensively interested in the growing of citrus fruits in California where he had large interests. At the death of Mr. Call resolutions in his memory were passed by the senators and assemblymen from the Southern California districts expressing California's obligation to Mr. Call for his interest and assistance in the development of the citrus fruit interests in the State.

THOMAS CLELAND DAWSON, 1866-1912

Born at Hudson, Wis., July 28, 1866; died at Washington, D. C., May 1, 1912. Son of Allan Dawson, attorney for the Chicago, Milwaukee & St. Paul R. R. Co. at Hudson, and his mother was Anna Cleland Dawson. He was a graduate of Hanover College, Indiana, and of the Cincinnati Law School in 1886. Practiced law in Des Moines as a member of the firm of Hume & Dawson from 1886 to 1890. Served four years as Assistant Attorney General. Removed to Council Bluffs in 1890 and became a partner with Hon. John Y. Stone, as Stone & Dawson. In 1893 he was appointed secretary of legation to Brazil under Minister Conger. From that time he remained in the diplomatic service in which he rose rapidly to places of distinction. He retained his legal residence at Council Bluffs. Was made Minister Resident and Consul General to Santo Domingo in 1904 where he successfully executed Mr. Roosevelt's plan for the administration of the custom duties of that country. He became the traveling representative of the government in matters diplomatic and was sent on numerous missions which he executed with rare ability. In January, 1907, he was sent to Colombia in connection with the negotiation of the Panama-Colombia treaty. He was sent on a special mission to Haiti. He was sent by Secretary Knox to Chile where he effected an arrangement for the

arbitration of what is known as the Alsop case. In 1904 he published a book entitled "The South American Republics." He became the best informed man in the diplomatic service in the matter of the nations of South America and was so recognized. Because of his wide acquaintance and unusual service and equipment he was made chief of the division of Latin-American affairs in the Department of State with residence at Washington. His unusual service is well set forth in an article in *Munsey's Magazine* for July, 1912, from which the following is taken:

The flag of the state department was half-masted recently in honor of the memory of an American diplomat who if he had died on the battlefield, would have no more truly given his life for his country. He was Thomas Cleland Dawson of Iowa.

Fifteen years ago Dawson went to Rio as a youthful secretary of legation who took his duties very strenuously. He learned the language, the literature, the institutions, the annals of the South American republics and wrote a history of them which is a standard everywhere. Becoming a specialist in the diplomacy of Latin-America, he was hurried away to Santo Domingo to make a modern readjustment of the country's finances and to prevent European interference.

Success in one task only meant the imposition of a harder one. Dawson was sent as minister to Colombia, to convince the touchy people of that republic that the United States is not their mortal enemy. Next he hastened to Chile, to save a delicate situation caused by the blundering delivery of an unnecessary ultimatum to that proud and progressive little country in connection with a disputed claim. Thence he went to Panama to straighten out complications there. He was America's special ambassador to Venezuela on the occasion of its centennial anniversary of independence. He succeeded in cleaning up a seemingly hopeless situation in Nicaragua, and was working on a like effort in behalf of Honduras when he died.

Always managing the little things, he knew little of gold lace and decorations. He was a business diplomat, ordered from one firing line to another. Where there was real trouble there was Dawson.

On his travels he lived in all climates and at all altitudes; he endured manifold hardships and untold nervous strain. He left health and comfort behind him on his way. Repeatedly he passed promising Fortune, her arms laden with opportunities, with no more than a casual nod. At forty-six he died, a victim of hard work done and of maladies contracted in the doing. Yet it was better far, and what he himself would have chosen, to pass out in the prime of life with such a record of usefulness, than to live for a hundred years without accomplishing aught worth the doing.

He was an evangelist of peace; did little that was spectacular, but a vast deal that was splendidly serviceable. If monuments were built for those

who best deserve them, Dawson would have his statue in the Pan-American Union Building at Washington.

GEORGE E. DRAPER, 1846-1913

Born near Monroe, Mich., March 28, 1846; died Jan. 29, 1913, at Sidney, Iowa. Resided on a farm near Dryden, N. Y., until 1865; graduated in 1869 from Hamilton College, N. Y. Taught Latin and Greek in a preparatory school at Penn Yan while attending college. Received the Hamilton prize for oratory. Later received from the same college the Phi Beta Kappa degree for distinguished scholarship. Removed in 1869 to Council Bluffs, and began the study of law in the office of Clinton, Hart & Brewer; admitted to the bar at Council Bluffs, in 1870, and located at Plattsmouth, Neb., in partnership with Judge Reesce. Removed to Sidney in 1872 and formed a partnership with J. N. Cornish; formed a partnership in 1877 with A. B. Thornell which continued for ten years. Married Oct. 23, 1873, to Ada B. Loose, who survives him. There were four children, Otho Eugene, who died in 1884, Ada Winnifred, Edna Mary, and Raymond Edward, who survive the decedent. He was a strong lawyer and capable business man, prominent in the life of the community in which he lived.

CRAWFORD F. DAVIS, 1854-1913

Born in Iroquois County, Ill., Jan. 2, 1854; died March 2, 1913, at Bloomfield, Iowa. Removed to Davis County, Iowa, when eighteen years of age where he resided on a farm for seven years. Educated in the Bloomfield schools. Learned telegraphy and served as assistant agent for the Wabash Railroad in 1872; learned the printer's trade and worked in the office of the *Grangers' Advocate, Commonwealth, Republican, and Democrat* in Bloomfield and later in the office of the *Odd Fellows' Banner*. Studied law with M. H. Jones in 1877 and taught school the following winter. Admitted to the bar in April, 1878. In June, 1878, established a newspaper called the *Legal Tender Greenback*. Was a delegate to the Pomeroy St. Louis convention in March, 1880, and secretary of the Editorial Greenback Association in 1879-80. Became United States Pension Examiner in 1887 and removed to Moberly, Mo. Returned in 1889 to Bloom-

field and changed the name of his paper to the *Bloomfield Farmer*, which he published until 1908 when he was elected county attorney. Held this office two years and served as mayor of Bloomfield. In 1911 was appointed Justice of the Peace and elected to the same office in 1912. Married March 4, 1880, Miss Mamie Hagen, who died Aug. 31, 1907. Five children were born, three of whom survive, namely, John W. of Bloomfield, Mrs. Sylvia Hickman, Beeler, Kan., and Ralph W., Bloomfield. Aug. 14, 1908, married Mrs. Catherine G. Williamson of Floris, Iowa, who survives him. Member of the Methodist Episcopal Church, an active Odd Fellow and Good Templar.

L. E. FELLOWS, 1834-1912

Born at Corinth, Vermont, Aug. 22, 1834; died in Lansing, Iowa, July 17, 1912. Educated in the public schools of Vermont. Removed to Iowa in 1857 where near Lansing he engaged in farming, taught school and studied law. Married in 1861 to Miss Mary S. Read who survives him. There were eleven children, eight of whom are now living: Wilson R. Fellows, Albert M. Fellows, Lura F. Crowder, Mamie F. Beeman, Roger L. Fellows, Jennie Prescott, Liberty E. Fellows, and Grace C. Saum. Admitted to the bar in 1862 in Lansing, in 1865 elected to the House of Representatives; elected to the Senate and served two terms. In 1889 appointed judge of the 13th Judicial District and was five times reelected for full terms. Was for twelve years a member of the board of trustees of the Hospital for the Insane at Mt. Pleasant and was trustee of Upper Iowa University at Fayette. Was a Mason and for two years Grand Master for Iowa. Member of the Methodist Episcopal Church. Originally a Democrat but in later years he identified himself with the Republican party. Judge Fellows had unusual ability and ranked very high among the jurists of the State. His splendid character, broad culture, and great ability were recognized throughout the State.

DWIGHT T. GIBSON, 1843-1912

Born in Chenango County, N. Y., in May, 1843; died at Waverly, Iowa, June 19, 1912. Attended school in New York, including three years at Oxford Academy. Entered a law office

at Oxford when eighteen years of age; admitted to the bar in Madison, Wis., in 1868. Removed in 1870 to Mason City, Iowa, where he practiced for two years. In 1872 removed to Waverly and formed the firm of Burk & Gibson. After one year became a member of the firm of Gray, Daugherty & Gibson, which continued for eight years. Then formed a partnership with A. E. Dawson as Gibson & Dawson, which continued until six years ago when Mr. Dawson retired because of ill health. Served as a Union soldier in the 19th New York Infantry. Married in 1873 to Miss Elizabeth A. Hazleton, who with a daughter, Mrs. Grace Hine of Madison, Wis., survives him. Mr. Gibson was a strong character, a man of broad education and high ideals. He became very prominent in the practice of his profession and was a leader of the bar in his county for more than a quarter of a century.

HADLEY M. HENLEY, 1853-1912

Born in Pleasant Valley, Iowa, Feb. 26, 1853; died June 15, 1912. Removed to Davenport when twelve years of age; attended Griswold College and later the State University. Newspaper reporter on the *Davenport Gazette* for three years, when he returned to the University and entered the Law Department. Graduated in 1877 with highest honors in a class of 104. Married May 27, 1878, to Ella Van Fleet, who survives him. He is also survived by one son, Jesse V. Henley, and one daughter, Mrs. Louise Henley Vrooman. Entered the law office of Putnam & Rogers in 1877. In 1880 began practice for himself. Became extensively interested in the loan business and was a successful business man. He was a man of broad charities and high honor.

CARL F. HASS, 1857-1912

Born April 3, 1857, in Lutjenburg, Germany; died Nov. 9, 1912, at Davenport, Iowa. Removed to America in 1864. Attended the public schools in Davenport and the Montague & Lillibridge Business College. In 1874 became a clerk in the law office of Bills & Block; admitted to the bar in 1882; became deputy clerk of the courts in 1883; in April, 1884, became a member of the firm of Bills & Hass, which continued to 1897.

In 1899 formed the firm of Hass & Hamann. His practice related chiefly to the settlement and management of estates. In 1883 married to Miss Winnie R. Wriedt, who survives him. Member of the order of Elks and the Turner Society.

GEORGE C. HULL, 1848-1912

Born in Boone County, Iowa, Dec. 22, 1848; died in the same county Oct. 17, 1912; Mr. Hull was not active in the general practice but was one of the oldest members of the bar in Boone County. He served as justice of the peace and held the respect of the bar of his county. He is survived by a widow and several children, whose names your committee has been unable to obtain.

HENRY W. HULL, 1847-1912

Born near Madrid in Boone County, Iowa, Aug. 8, 1847; died July 23, 1912, at Madrid, Iowa. He was the first white child born in Boone County. Enlisted in 1864 in Company F 13th Iowa Volunteers and served through the war. Removed to Missouri and in 1878 was admitted to the practice of law in Grant City, Mo., where he remained until 1890. Removed to Des Moines and practiced law for ten years. In 1900 returned to Madrid, Iowa. Was a member of the order of Knights of Pythias and the Grand Army of the Republic; he was twice married and is survived by six children.

CHRISTIAN C. HEDGES, 1833-1913

Born in Richland County, Ohio, May 30, 1833; died Feb. 26, 1913, at Marengo, Iowa. Graduated from the Cincinnati High School; in 1849 went to California; returned in 1859 and located at Marengo. Organized Company G of the 7th Iowa Infantry and was made captain. Elected senator from the Iowa-Johnson district in 1879. Elected Circuit Judge in 1881 and served until the office was abolished. Continued the practice of law until his death. Was for some years a partner of the late J. N. W. Rump. Married in 1864 to Miss Ellen Rush, who survives him. Five children also survive. During his military service he acted as Judge Advocate. Captain Hedges was a very strong lawyer and a citizen of the very highest type, highly respected in his

community and throughout the State. . He had a long, active, and successful professional career. The bar of his county passed resolutions concerning his life which contain among other things the following statement: "His life as a lawyer was a splendid example of integrity, scholarship, and matchless legal attainments that have added lustre to the history of the bench and bar of Eastern Iowa that will endure for years to come."

JOHN W. HARVEY, 1840-1913

Born in Wells County, Ind., Sept. 16, 1840; died Feb. 28, 1913, at Leon, Iowa. Removed in 1846 to Jasper County, Iowa, where Judge Harvey grew to manhood. Entered the Central Iowa University at Pella, which he left when the civil war broke out and enlisted as a private in Company G, 18th Iowa Infantry, on July 7, 1862. Became First Lieutenant of the 11th U. S. Infantry in 1863. In 1865 he received a captain's commission and served to the close of the war. Was discharged in 1866. Again entered the Central Iowa University at Pella in 1866 and graduated one year later. Graduated from the Law Department of the State University in 1868. Formed a partnership with Major J. L. Young for some years. Elected judge of the 3rd Judicial District, serving for eight years. In 1890 formed a partnership with R. L. Parrish, continuing for eleven years. Formed a partnership with his son James F. Harvey, who graduated from the State University in 1901. This partnership continued until his death. Since 1894 was president of the Farmers' & Traders' State Bank and interested in other banks at Lamoni and Mt. Ayr. Married in March, 1868, to Miss Emma Eaton and is survived by his widow and son James F. Judge Harvey was well known and highly respected throughout the State and had high standing as a lawyer and citizen.

ROLLIN M. HUNTER, 1858-1912

Born December 29, 1858, in Story County, Iowa; died June 26, 1912, at Sibley, Iowa. Raised on a farm, graduated from the Ames Agricultural College in 1881 and taught school at Wall Lake; admitted to the bar in 1883 and removed to Sibley in 1898. Was county attorney for Sac County and was Demo-

cratic nominee for judge, and county attorney at Sibley. Was a member of the school board and library board at the time of his death. He is survived by his wife. He was a member of the Masonic order.

ELBERT H. HUBBARD, 1849-1912

Born August 18, 1849, at Rushville, Ind.; died 1912, at Sioux City, Iowa. Mr. Hubbard spent his youth in Indiana, where he attended school. Removed permanently to Sioux City in 1867 and entered Yale College in 1868, graduating with the class of 1872. Returned to Sioux City where he studied law with C. R. Marks and was admitted to the bar Jan. 28, 1874. Became a member of the firm of Marks & Hubbard until January, 1878. Continued to practice law alone until 1881 when he formed a partnership with Mr. Spaulding and later Henry J. Taylor became a member of the firm; in 1890 became a partner in the firm of Wright & Hubbard, and later Wright, Call & Hubbard, which continued until 1902, when he became a member of the firm of Hubbard & Burgess. In 1882 was elected a member of the Iowa Legislature and in 1899 state senator. Elected to Congress in 1904 and remained a member until the time of his death. He was married in 1882 to Miss Eleanor H. Cobb, of Sioux City, who survives him. There are four children surviving, namely, Elbert H., Charlotte, Eleanor, and Lyle, the latter practicing law in Sioux City. Mr. Hubbard was a great student and thinker, well versed in literature, a ready orator, and a well balanced lawyer. Mr. Hubbard was a gentleman of high character and splendid attainments.

EDWARD A. LONG, 1866-1912

Born Nov. 5, 1866, in Bremer County, Iowa; died July 27, 1912, at Waverly, Iowa. Graduated from the high school at Waverly in 1882; graduated from the State University in 1887 with the degree of B. S., and three years later was granted the title A. M. Studied law in the office of Gibson & Dawson and was admitted in 1890 to the bar, and began the practice of his profession. Was Chancellor Commander of the K. of P. lodge; was an expert stenographer and typewriter, at one time court re-

porter. Later was a member of the firm of Long & Kingsley. Was city attorney 1891 to 1901 and also county attorney. Married Nov. 18, 1891, to Miss Grace Skillen who, with one son, Herbert L., survives him. Mr. Long was a man of great public spirit and active in the life of his community.

D. E. LYON, 1834-1913

Born in Franklinville, N. Y., in 1834; died April 3, 1913, at Dubuque. Attended school in New York and also at Oberlin College. In 1859 took the bar examination in New York and was admitted. He at once removed to Dubuque where he remained in the practice fifty-four years. Entered the office of Burt & Angell, after the dissolution of which he entered into partnership with H. B. Fouke. On the death of the latter in 1891 Mr. Lyon practiced alone until 1893 when he formed a partnership with D. J. Lenehan. In 1896 he formed a partnership with his son, Geo. T. Lyon. In politics he was Republican. Was city attorney and surveyor of the port at Dubuque. He had a very extensive practice in the State, Federal, and Supreme Courts. During the war he was a recruiting officer and aid-de-camp. He was twice married, first to Cecelia Howard, and the second time to Eunice Taylor Lyon, who preceded him in death two years ago. The children surviving are George T. Lyon, Mrs. A. Y. McDonald, Mrs. Anna Tileston, and Mrs. Geo. B. Grosvenor. An active member of the First Congregational Church. He died at the age of seventy-nine years after a long and successful professional career and a highly honorable record.

JOHN LINDT, 1846-1912

Born in Erie, Pa., in 1846. Died Aug. 30, 1912, at Toledo, Ohio. He was one of the pioneers of Council Bluffs which was his home. He was a member of the Pottawattamie County bar for more than thirty years. A member of the firm of Lindt & Schurz at the time of his death. Was an active Republican and a member of the G. A. R., having helped to organize Abe Lincoln Post. His army service was with the Pennsylvania Light Artillery regiment. Was Past Grand Commander of the Iowa G. A. R. He belonged to the following orders: Masons, Knights of

Pythias, Odd Fellows, Modern Woodmen, and was president of the Fraternal Order of Eagles. He is survived by his widow, Mrs. Sarah Lindt, Dr. Hattie L. Lindt, daughter, and two nephews, Emil and W. H. Schurz, all of Council Bluffs.

BENJAMIN W. LACY, 1849-1912

Born March 12, 1849, at Lock, N. Y., and died Sept. 28, 1912, at Dubuque. Came to Fayette County, Iowa, when six years of age. Graduated from the Upper Iowa University; when 19 years of age went to Alexandria, Va. Pursued the study of law at the Columbian Law School, now a department of George Washington University, working in the meantime in the office of his uncle, Judge Willoughby, and as clerk in the Census Bureau; on the advice of Senator Allison he returned to Dubuque in 1872 and entered the law office of Adams & Robinson, becoming a member of the firm in 1873. Shortly afterward he was appointed Circuit Judge for that district and was later elected to the same position and after reelection resigned and reentered the practice as a member of the firm of Robinson, Powers & Lacy. Later the firm was known as Powers & Lacy, Powers, Lacy and Brown, Lacy & Brown, and Lacy, Brown & Lacy. Married in March, 1873, to Helen Werden who died soon afterward. Married again in October, 1879, to Miss May Robinson. Was president of the Iowa Trust & Savings Bank, director of the Union Electric Co. and the Key City Gas Co. Was active in public library matters, serving as a member of the board. Mr. Lacy is survived by his widow, May Robinson Lacy, and three sons, Frank R., Burritt S., and Clyde W. Judge Lacy was a man of wide experience and fine attainment as a lawyer and was prominently related to all the higher life of his home city.

EDWARD MILLS, 1859-1913

Born in Dubuque, July 3, 1859; died at Red Oak, Iowa, Feb. 22, 1913. Moved to Bridgewater, Conn., when a small boy and at 13 years of age removed to Red Oak, Iowa. Graduate of the Red Oak high school; worked in the Western Union Telegraph office and later studied law in the office of Hewitt & Rogers. Admitted to the bar in 1880, and shortly thereafter became a member of the

firm of Mills & Ecker. Elected county attorney on the Republican ticket in 1894 and reelected in 1896. Compelled to retire from his profession by ill health he conducted the *Colonial Daily* at Red Oak at the time of his death. Decedent is survived by Mrs. Mills, to whom as Mrs. Rose Myers Stinemark he was married August 26, 1895. Two sons survive him, namely, C. A. Mills, of Joliet, Ill., and C. B. Mills, St. Joseph, Mo. A member of the Christian Church, Knights of Pythias, and was prominent in politics.

THOMAS H. MILNER, 1852-1912

Born Jan. 1, 1852; died August 18, 1912. Came to Iowa in 1857 and lived on a homestead in Jones County. Graduate of Cornell College at Mt. Vernon; read law in Dubuque and on being admitted began the practice in Iowa Falls, where he remained several years and was married. In 1886 he removed to Belle Plaine where he continued to practice law until the time of his death. Was city solicitor and active in the development of the municipality. His practice covered several counties surrounding his home. He was a man of great courage and large heart, and was a general favorite in the bar of his county. He is survived by his wife and a son.

E. T. MORRIS, 1844-1912

Born in New Jersey Jan. 25, 1844; died at his home in Des Moines Nov. 22, 1912. His father was a sea captain until his removal to Illinois in 1852. Removed to Jasper County, Iowa, in 1863. Attended school at Central University, Pella, Iowa; enlisted in 1861 as a member of Company D, 26th Illinois infantry, and served until 1865 when he was mustered out as a corporal. graduated from the Law Department of the State University at Iowa City in 1872 and began the practice of law in Des Moines in 1873. Was for twenty years associated with Hon. H. Y. Smith but since 1894 has practiced alone. Was a member of the order of Elks, Knights of Pythias, and in politics he was a Republican. Mr. Morris was a strong, clean, earnest lawyer universally respected in the community in which he lived.

JULIAN PHELPS, 1838-1913

Born near Chittenden, Vt., April 4, 1838; died Feb. 25, 1913, at Hollywood, Cal. Raised in Vermont, educated in the schools there, where he graduated from the State University in 1864. Graduated from the Albany Law School in 1867. Removed to Lucas County, Iowa, in the fall of 1867 and became a member of the firm of Temple & Phelps and later Temple, Phelps & Temple. Later he removed to Atlantic where he resided until recent years when he removed to Hollywood, Cal. Served in the Iowa State Senate from Atlantic for two terms ending in 1897. Appointed Consul to Crefeld, Germany, in 1897 and remained four years. Married in 1871 to Frances M. Case, who survives him. He was a life-long Republican in politics. Enlisted in 1863 in Company K, 11th Vermont Infantry, until compelled to resign because of wounds. Was the author of the anti-cigarette law in the Iowa senate, and was a life-long member of the Congregational Church.

CORNELIUS L. POOR, 1845-1912

Born May 13, 1845, in Venango, Pa.; died May 12, 1912. Attended the State Normal Institute at Edenborough and was admitted to the bar in 1874. Removed to Burlington, Iowa, in 1875, where he resided at the time of his death. In 1867 he married. His widow survives him and also the following children: Mrs. George Millard, Mrs. Edward Disque, F. L. Poor, and B. P. Poor. Republican in politics and one of the owners of the *Burlington Hawkeye*. City solicitor from 1878 to 1882 and city attorney under the commission form of government at the time of his death. At one time a member of the firm of Poor & Millsapugh and later became associated with Chas. Baldwin. In 1905 he formed a partnership with his son, Ben P. Poor. Mr. Poor was a leading member of the bar of Des Moines County for many years, a wise counsellor, clear headed lawyer and a citizen of the highest standing.

ROBERT F. RATCLIFF, 1825-1912

Born Feb. 9, 1825, near Williamsburg, Va.; died Nov. 20, 1912, at Fairfield, Iowa, which was his home. Came to Iowa in 1848

and married March 29, 1849, to Martha Helen Pike of Maysville, Ky., who died July 10, 1862; married to Margaret A. Freeman in October, 1863, who died in February, 1911. Two sons and two daughters survive him. Taught school in Jefferson County, Iowa, in 1850; elected clerk of the district court in 1854-61. Entered into the practice of law in 1861 and continued to 1905. Mr. Ratcliff was a Quaker; he was an old school abolitionist and became a member of the Republican party, being a delegate to the first Republican convention at Iowa City, and a supporter of Lincoln. He was major of the local militia. In 1875 he joined the Republican party. He was a member of the order of Odd Fellows from about 1851.

P. A. SAWYER, 1847-1912

Born at Dixfield, Maine, June 23, 1847; died Oct. 22, 1912, at Sioux City. Received a public school education after which he became a teacher; at seventeen years of age he removed to Iowa and taught school near Des Moines for a couple of years. Shortly afterward he returned to Dixfield and remained until the death of his parents. Studied law in an office in Phillips, Maine, and was admitted to the bar in his twentieth year at Phillips. Became Deputy Secretary of State in Maine in 1879 and was elected Secretary of State in 1880 on the Greenback ticket. Removed to Sioux City in 1890 and entered into partnership with Fred Taft. He was later associated with Judge Van Wagenen and later practiced alone. Elected to the Iowa Legislature in 1893 as a Republican. Declined renomination and resumed the law practice in 1895. Republican nominee for mayor in 1896. Was one of the founders of Morningside College in which he took a very active interest. Was president of the Sioux City Humane Society and attorney for the Boys & Girls' Home. Mr. Sawyer was very active in church and charitable matters. He had a wide literary interest and wrote some excellent verse. He is survived by his widow and Dr. Prince A. Sawyer, a son.

EDWARD F. SULLIVAN, 1837-1912

Born November 3, 1837, in Nova Scotia; died Aug. 28, 1912, at his home in Creston, Iowa. Studied law at Iowa City in 1858,

having come to Johnson County when fifteen years of age. Admitted to the bar in 1860. Located at Afton in 1863. In 1872 became a member of the firm of McDill & Sullivan, later the firm was known as Sullivan & Sullivan, the second member being Jerry B. Sullivan, late of Des Moines. In 1887 removed to Creston as a member of the firm of Sullivan & Fry and Sullivan & Lee. Married in 1867 to Elizabeth Guthridge, who with five children survives him. He was a member of the Catholic Church and a prominent Democrat. In the early 80's he supported the Populist movement and was a friend of General Weaver and Mr. Bryan. He was not only a successful lawyer but a successful farmer and stock raiser and a business man of unusual ability. Mr. Sullivan was very prominent in his portion of the State and a man of strong and unsullied character.

ISAAC S. STRUBLE, 1843-1913

Born near Fredericksburg, Va., Nov. 3, 1843; died at his home in Le Mars, Iowa, Feb. 17, 1913. In 1845 he moved to Ohio and came to Iowa in 1857. In August, 1862, enlisted in Company F, 22nd Iowa Infantry. Promoted to the rank of sergeant in 1864. Was mustered out of the service in July, 1865. Participated in many engagements, including Port Gibson, siege of Vicksburg, battle and siege of Jackson, Miss., and Cedar Creek, Va. He went to St. Louis in 1866 where he worked as a bookkeeper in the wholesale house of his uncle. Attended the State University of Iowa and was admitted to the practice in 1870. Began practice in Polo, Ill., in 1872, when he removed to Le Mars, Iowa. Elected to the 48th Congress in 1882; reelected in 1884, 1886, and 1888. He had a long and active congressional career. He was chairman of the Committee on Territories in the 51st Congress and aided in the organization of the Territory of Oklahoma and the admission of the new States of Idaho and Wyoming. He was interested in many business enterprises and remained in the practice of law in Le Mars until the time of his death. Married at Unity, Me., June 18, 1874, to Miss Adelaide E. Stone, who, with four sons, survives him. Member of the First Congregational Church of Le Mars, and belonged to the Masons, Knights of Pythias, and G. A. R., and was active in temperance legislation.

Mr. Struble had a highly honorable career. He was held in great respect by the people of his community and by the State at large.

JOHN J. TOLERTON, 1840-1912

Born in 1840 in Salem, Ohio; died June 8, 1912, at Cedar Falls, Iowa. Educated in Meadville, Pa. Removed to Cedar Falls in 1866 and began the practice of law. For three years he was judge of the district court. Active member of the M. E. Church. Married in 1867 to Margaret Taylor of Meadville, Pa., whose death occurred in 1908. Two daughters, Mrs. H. E. Aldrich of Des Moines, and Mrs. J. D. Thompson of Los Angeles, survive him. In politics Republican, and belonged to the Masonic order.

D. W. WOODIN, 1845-1912

Born in Pulaski, Mich., Dec. 8, 1845; died June 15, 1912, at Hot Springs, Arkansas. Enlisted Aug. 10, 1862, as a private in Company K, 3rd Michigan Cavalry, and served until discharged June 2, 1865. Then removed to Iowa and studied law in the office of Hon. Jos. R. Read at Adel. Located at Dallas Center in the practice of law; later removed to Adel. Removed to Des Moines in 1892, where he became a member of the firm of Ayres, Woodin & Ayres which continued until shortly prior to his death. Mr. Woodin was a man of splendid character and good legal attainments. Two daughters survive him.

WILLIAM H. WALLINGFORD, 1872-1912

Born at Greensburg, Ind., Feb. 6, 1872; died Dec. 12, 1912. Educated in the public schools in Greensburg, and graduated from the Cincinnati Law School and admitted to practice at Alexandria, Ind. Elected Assistant County Attorney in 1899 but resigned and removed to Des Moines where he entered the law office of Gurnsey & Granger. In 1902 he opened an office for himself and continued in the practice in Des Moines until his death. He leaves surviving him a widow and stepson and an older brother.

JOHN LEWIS YOUNG, 1833-1912

Born in Pickaway County, Ohio, June 30, 1833; died June 25, 1912, at his home in Leon, Iowa. Came to White County, Ohio, in 1840. Removed to Oskaloosa, Iowa, in 1852 where he attended normal school as student and teacher until 1855. Removed to Ft. Madison and read law in the office of J. M. Read. In March, 1856, taught school at Bloomfield and read law in the office of Trimble & Baker. Admitted to the bar January 18, 1858. He practiced at Bloomfield until November, 1859, when he removed to Leon. June 10, 1861, joined Edwards' Border Brigade as a private, making several raids into Missouri. He was quartermaster of this command with headquarters at St. Joe. In November, 1861, he enlisted in Company A, 17th Iowa Infantry. He soon returned home on recruiting service and raised a company of which he was elected captain, and served until January, 1863, participating in the battles of Farmington and Iuka. As Major he was placed in command of the Regiment from September 19th until the first of November. Commanded the regiment at the battle of Corinth and was highly complimented by General Rosecrans. He returned home because of ill health in January, 1863. Recovering his health in August of the same year he raised a company of the 9th Iowa Cavalry of which he was made captain and served until November, 1865, when he was promoted to Major. Mustered out Feb. 18, 1866, and returned to the practice of law in Leon. Formed a partnership with Judge Harvey and became cashier of the First National Bank of Leon in 1869, serving until 1871. Was Traveling Attorney for Dodd, Brown & Co. of St. Louis for some years. In 1877 again formed a partnership with Judge Harvey which continued until 1882 when he became associated with Stephen Varga. Later he was a partner of R. L. Parrish. In 1899 was appointed to a position in the Treasury Department at Washington, where he remained until about a year prior to his death. Married Oct. 19, 1863, to Libbie Woodbury at Garden Grove, Iowa. The widow and six children survive. Major Young was prominent in public affairs, well known and highly respected throughout the State.

THE PRESIDENT: If there is no objection, the report will be received and placed on file and printed in the proceedings.

Next is the report of the delegates to the American Bar Association, by Judge E. M. Carr.

REPORT OF DELEGATES TO AMERICAN BAR ASSOCIATION

Mr. Chairman, and Gentlemen of the Iowa State Bar Association: I have no written report. I did not understand that I was Chairman of the delegates appointed last year to attend the American Bar Association, and made no report. But I attended and know something about what was done, and I can tell you in brief some of the important happenings at that meeting last year.

The most important question we had to deal with was the negro question. Two years ago, when the American Bar met at Boston and the tables were spread for the annual banquet, we learned for the first time that there was trouble, that Mr. Lewis, a man with colored blood in his veins, had been elected a member of the Association, and many of the ladies that were in attendance there refused to go to the banquet room, even to look on as guests, if Mr. Lewis sat down at the annual banquet. That was no frivolous affair. Mr. Lewis, I think, had to give us assurance he would not attend before a great number of the ladies would come into the room. You would hardly suspect, to look at Mr. Lewis, that he had any colored blood in his veins. I think he is a graduate of Harvard University, and was Assistant Attorney General of the United States, and the peer of any lawyer from an educational standpoint.

The General Council of the American Bar Association is, in theory, the governing power of the Association, but during the interim between sessions, its committees act in its stead, and its Executive Committee, between the meeting at Boston and the one at Milwaukee last year, undertook, on a technicality, to deprive Mr. Lewis of membership in the Association. That stirred up the blood, so to speak, of the General Council, and your delegate as the member for Iowa in that Council, and a majority, I think, of the General Council, did not propose standing by the action of its committee. After considerable negotiation, it was

concluded to pass the whole subject up to the Association itself to be determined. The trouble was in the mouth of nearly everybody before the first meeting of the Association there at Milwaukee, and it was decided to hold a caucus, because it was thought if the debate was public and found its way into newspapers, it would disrupt the Association. So we held a caucus with closed doors. The men from south of the old Mason and Dixon line were largely in favor of sustaining the committee on technical grounds and approving of the rejection of Mr. Lewis. I, as the member of the Executive Council from Iowa, received many telegrams from my State, protesting against treating Mr. Lewis different than any other human being.

The people from the South said they came to meetings of the American Bar Association with their wives and daughters, and that it was social as well as educational, and they did not propose to remain in the Association if it was going to admit colored men to membership. It was fortunate for the Association that there were no newspaper reporters there. It was finally determined to appoint a committee to see if the matter could not be compromised and have no debate in the open session. Your delegate took the position in that contest that human rights rose higher than any color line, and, when that question was put up to the conscience of the American Bar, he did not believe that they would discriminate against Mr. Lewis because he had colored blood in his veins, and the committee appointed by that caucus decided in that way. Mr. Lewis is still a member of the Association, and the committee of the General Council was turned down. He is a gentleman and a scholar, and I am glad of the result. But new applications for membership in the American Bar Association provide, that the applicant must state his race, color, and sex, and I infer from that, that it will be quite difficult for any person to become a member of the American Bar Association in the future, who is not of the Caucasian race, and a man. I do not think the Association intends to hereafter admit women, or any men of color, no matter what race, to the Association. The probabilities are the applicant would not get past the General Council, consisting of one member from each State and Territory, or the Executive Committee elected by that Council.

Now, I have little more to say, further than this: there were three great papers or addresses listened to during that session of the American Bar Association. You all recall the political conditions in this country last year. There were really three great parties. Now, it is one of the glories of the common law, and I believe it has a distinctive excellence over any other judicial system, that it has growth in it; it grows. In the civil law, there is no growth in it, but the common law continues to grow. We had Democrats and Republicans and Progressive Republicans last year, all three contending that this great governmental system of ours should grow in certain directions, in somewhat different directions. The Democrats said it should branch out here; the Progressive Republicans said it should branch out in another direction, and the Republicans who were in power were in favor of keeping the past upon its throne and growing the tree straight up without any branches.

The Association selected three men, each a representative of one of these great parties, to deliver addresses. President Gregory of the Association is a Democrat, and he delivered the annual address. Frank B. Kellogg of St. Paul, the present President of the Association, a follower of Theodore Roosevelt and the attorney who tried the great case against the Standard Oil Company, read a paper. And I was surprised by the masterly address of Senator Sutherland of Utah, who was selected to represent the standpat Republicans. These three men delivered three addresses the equal of which I never heard at any meeting of the American Bar Association, and I have attended most of them for many years. I say this notwithstanding the fact that it has been the privilege of the members of the American Bar to listen to many great jurists and great orators. We have heard John F. Dillon, and John W. Foster, a former Secretary of State of the United States. Both of these men stand close to the head of the list of American lawyers. And we have heard Judge David J. Brewer, in his time one of the greatest jurists and orators in America. He was a member of that great Field family and more need not be said of his exceptional ability. And we have been talked to by another man, Le Baron B. Colt, who has recently been elected a United States Senator by the Republicans

of Rhode Island. If he lives, you will all hear from him. He is one of the greatest orators in America, and a jurist of commanding ability. You will hear from him in the United States Senate. At our meeting in Hot Springs, Virginia, in 1903, we heard Sir Fredrick Pollock, the noted English lawyer, but he was out-classed by Judge Colt. We have giants in the American Bar Association, and there is no greater lawyer at the American Bar, in my opinion, than this recently elected Senator. He was United States Circuit Judge for the New England District before his election.

These three addresses last year rank up the equal of anything I have heard in a dozen years in the American Bar Association, and we frequently have men of distinction from abroad to talk to us. Once we had a Chinaman, Chow Tszchi, a delegate from the Imperial Chinese Government. He was a great lawyer. He seemed to have a comprehensive grasp of the law of every country in the world. But these three addresses last year were the equal of any three addresses I ever heard at any session of the Association. Now, gentlemen, these were the leading features of last year. I thank you.

THE PRESIDENT: The report is received and placed on file.

We have with us a representative of the American Bar Association, in the person of Mr. Charles W. Farnham, of St. Paul. I think we should like to hear from him for a few minutes.

MR. FARNHAM: *Gentlemen of the Bar Association*: I am going to take but a very few minutes of your time. Fraternity, that fine thing Judge Wade has so nicely spoken of, is what brings me here. I just want to say a few things on the question of membership in the American Bar Association. It was organized in 1878, and for many years made no special effort to increase its membership. The meeting was nearly always held at Saratoga, but ten or a dozen years ago they broke away from Saratoga and went to various places of the country, but no effort was made throughout the country to increase its membership until last year, when a special committee on membership was formed, with the result that there was an increase of membership of twelve hundred members. This year we have a similar committee and

we hope for even better results. The American Bar consists of one hundred and twenty thousand lawyers. About six thousand of them are members of the American Bar Association. The American Medical Association recently closed its meeting with nearly six thousand men present at that meeting. It goes without saying that that makes the American Medical Association a power, and the same thing should be true of the American Bar Association.

Now, Iowa has a very small membership in the American Bar Association. You have in the neighborhood of three thousand lawyers. About ninety of them are members of the American Bar Association. Your State Association has something over six hundred members. Des Moines has twenty-five members who belong to the American Bar Association. Sioux City, Council Bluffs, Burlington, Keokuk, and Davenport, and all these places, have only one or two members each. Here is Sioux City with a bar that has been estimated to have one hundred and twenty-five lawyers, with but two members.

The Eighth Circuit has been given to me to increase the membership. Geographically it has the largest number of States, the biggest bar in the circuit. We have started a little campaign in Minnesota and we have some eighty or ninety members, and we will run well over one hundred. Mr. Kellogg asked me what we were going to do about the rest of the circuit. I said, a good way would be to go over the circuit, but the American Bar Association wouldn't do that, it would be too expensive. He told me to go ahead, and so I started and covered the whole circuit, from Utah on the West to Oklahoma on the south. I came back with over one hundred members, and with more money for the American Bar Association as a result of the trip than Mr. Kellogg had to spend for me on that trip. Now, I have come down to Sioux City. I took a drawing room on the train, am going to take it to-night going back, and I may not be able to say that all the money I spent to-day I got back. I hope some one will move that we have a committee, say, two from Sioux City and two from over the State to help me to get new members for the American Bar Association.

THE PRESIDENT: I think I shall appoint all those who are now members of the American Bar Association as a committee to help Mr. Farnham to get new members. Next in order is the report of the Committee on Grievances, E. C. Roach of Rock Rapids, Chairman.

REPORT OF COMMITTEE ON GRIEVANCES

To the Iowa State Bar Association:

Your Committee on Grievances respectfully report that there has been no particular complaint lodged with the committee. Our attention, however, has been called by the President to the matter of the method of procedure in disbarment proceedings.

As the law now is no one is especially charged with the duty of making investigations and instituting and carrying on prosecutions to purge the profession of the evil doer, unworthy to wear the name of lawyer, or to stand before the community as a member of a profession, whose object and aim are to maintain in society a high standard of morals and integrity, and to inspire its membership with the purpose of so conducting their business as that society at large may know that the rogue, the extortioner, or he who violates the sacred trust of his client has no place in our ranks. To prosecute a member of the bar for disbarment is, of course, an unpleasant duty. The ties of friendship, sympathy, neighborly and family relations often, we all know, intervene to prevent the institution of proceedings, which otherwise would be brought.

Your committee would, therefore, recommend, that this association assume a more active part in bringing about the disbarment of those who, by their evil doings, have forfeited their right to wear the garb of our profession. We further recommend that there be created a standing committee of three members, to be known as the Committee on Disbarment of Lawyers, which committee shall be appointed annually by the joint action of the retiring and incoming presidents of the Association. This committee shall be charged with the duty of the investigation of all charges, or reports of such conduct by members of the bar as justify or require disbarment proceedings; and with the further

duty of instituting disbarment proceedings when in the judgment of the committee they should be brought.

We further recommend, that the necessary and actual expenses of such committee, incurred in the performance of its duty, be paid from the treasury of this Association. We deem it beneficial and profitable to this Association and to the profession generally and helpful to society that we manifest our willingness and readiness to assume the burden of purging from our ranks those who disgrace us and wrong those who trust them.

We further recommend the enactment of a law authorizing the Attorney General to institute, appear in, and prosecute disbarment proceedings.

Respectfully submitted,

E. C. ROACH,
F. F. FAVILLE,
D. T. STOCKMAN,
W. B. QUARTON,
E. M. CARR,
Committee.

MR. E. C. ROACH: I did not receive the President's letter calling attention to the matter referred to in this report, and I think a report of this kind should perhaps be a little more full than this one. But the Association meets again in another year, and we thought we would make a start. I move the adoption of the report. (Duly seconded.)

THE PRESIDENT: You have heard the report of the committee and the motion to adopt. Are there any further remarks?

MR. J. N. HUGHES: I do not want to precipitate or take part in any extended discussion of this subject. I am inclined to think, however, that the matter of disbarment of the members of our profession ought to be left to the local people. I think it would be better if the situation would demand that the local judge be familiar with the facts and the need of some action, so that he would consider it necessary to order the institution of the prosecution, rather than to put it into the hands of a person far distant from the man who is to be tried. I am inclined to

believe this is the true system of American Government. We heard yesterday in the address of Judge Speer some very interesting and instructive statements of the danger of putting the prosecution too far away from the man who is concerned. For my part, as a member of this bar, I think it would be better that the man who is to be shorn of his rights to practice law, should have the prosecution placed in the hands of a local committee, men whom the district judge would know would be fair to him, fair to the profession, and fair to the people at large. So personally, I am opposed to the idea that the Attorney General's office, or that any state officer, or any person who is not thoroughly in touch with the local situation should be given either the responsibility or the power to prosecute or be interested in matters of this kind. It is a serious thing. At the present time I do not think I need fear that a prosecution may fall on me, because I do not know of any charges against me. But I do think it is a serious thing to take away from a man who has prepared himself for the practice of his profession, this right to continue in the practice, and I think it would be far safer if it were left to a committee whom the judge would appoint to prosecute the case and present it fairly and squarely, and to see that the interests, not only of the person who is charged are properly taken care of, but that the interests of all concerned are taken care of also.

So, as far as I am concerned, I would oppose this resolution.

MR. N. D. ELY: I would like to suggest an answer to my friend's objections to this resolution, and that is, that there is nothing in this resolution that takes away from the local bar association, or the power of the local judge to order these investigations and to proceed with any disbarment proceedings under the terms of the statute. I know that I speak advisedly, that I know of a number of instances in the State of Iowa and in the City of Davenport, where, while we have the machinery and we have the power there to go before the court to have a committee appointed to prosecute cases which it seems should be prosecuted, that these cases are not prosecuted and I know that the presence of those persons as members is a disgrace to the bar

of Iowa. I will call your attention to one instance, and that was S. F. Smith, a man who got away with \$100,000 or \$150,000 of money and who was tried and sent to the penitentiary for eleven years. He went and served his sentence, and the year after he got out of the penitentiary he died and was at that time a member in good standing of the Scott County Bar. I can cite another instance where a man is under two indictments and bound over to the grand jury now for acts simply criminal, and we have reason to believe they are true. There is no proceeding against that man, and for this reason: Here is a bunch of lawyers practicing law together and have been for years. I do something that is believed entitles me to disbarment. It is an odious task to prefer charges, and experience shows that it is a task that is not assumed by the various members of these various associations. But if you get it away from the actual locality and get it before a committee whose vote cannot be questioned, these proceedings will be had, and they should be had to bring the bar of Iowa back to where it belongs. We take away no rights under this statute. Here we will have a committee of the State Bar Association, and there is an officer of the State of Iowa to whom those things can be reported, who will take hold of them and see, not only that they are prosecuted, but that the man who is entitled to practice will not be convicted.

For these reasons I am very much in favor of the report of this committee.

MR. HUGHES: I just want to say this: I do not want any man to practice law who is not entitled to practice. I do think the responsibility of the charges at Davenport lies with the local situation. Mr. Ely ought to be man enough to stand up, if he knows that any one should be prosecuted, that he should be one of the members of the bar who should take part in preferring the charges. I say, it is the local duty of every bar association to take care of these things, and it would be better for them to do so rather than to shift the responsibility to some person who is far away. It is an instance of the state taking charge of the regulation of local affairs and it is shifting the responsibility to some one else. I say it is wrong. We ought not to ask that it be done;

we ought to take the local situation into our own hands; we ought to stand up. If we know the local situation demands cleansing we ought to cleanse it ourselves instead of shifting the responsibility to some one else.

MR. ROACH: The very suggestion Mr. Hughes made was one reason this committee thought it would make the recommendation. The final trial is always in the community and before the court where a party is charged. To be sure, it is an important matter to deprive any one of the right to practice, but when he forfeits that, this committee thought this Association ought to assume some responsibility in the matter.

MR. CHAS. PERGLER: The part objected to, as I understand it, was the reference to and the interference by the Attorney General. May we have that read again?

(Mr. Roach here re-read that portion of the resolution referring to the Attorney General.)

MR. CHAS. S. MACOMBER: Perhaps I can throw some light on this and give the members here an easy way out of the trouble. I always believe in speaking the truth. There is a county in this State named Crawford. I will say truthfully, the record of the bar of our county is that it is as able a bar as there is in the State. A few years ago, a committee was appointed, composed of three eminent lawyers, to investigate charges against one of the foremost lawyers, P. W. Harding. He was not disbarred. Now, there is a feeling there that the lawyers of Denison feel towards each other as the doctors do towards each other in every municipality in the State of Iowa. By throwing this into the hands of a committee of the State Bar Association, you will remove all insinuations and charges that might be made against the local bar. If you have the local bar make these charges, every farmer, every one around will say, "Oh, it is jealousy." You will have to go outside to investigate such matters and you will get exact work and quick work. I am in favor of that resolution.

THE PRESIDENT: The question is on the adoption of the resolution.

The resolution was declared by the President as carried.

THE PRESIDENT: In order to whip this into shape, I am going to take the responsibility of referring this resolution to the Committee on Constitution and By-Laws. The Chairman of that committee is Mr. A. T. Cooper. If there is no objection, it will be so referred.

We will next hear the report of the Committee on Uniform Laws, Mr. N. D. Ely, Chairman.

REPORT OF COMMITTEE ON UNIFORM LAWS

Your Committee on Uniform Laws submits the following report, which is intended to be more for the information of the Association than any direct recommendation for the enactment of any statute.

It appears from the records of this Association that the first Committee on Uniform Laws was appointed in 1908 and that none was appointed in 1909. In 1910 a committee was again appointed while there was none in 1911 nor for the year 1912. This committee was appointed for the current year 1913. This record is somewhat remarkable when we take into consideration the importance of the questions involved that should be taken up by such a committee and reported to the Association.

As you are undoubtedly aware, there is in existence an organization known as "The Conference of Commissioners on Uniform State Laws," which meets once a year at selected places and holds sessions generally for five or six days. This conference is composed of commissioners appointed by the Governors of the various States and their object and duty is to consider and recommend uniform laws for the adoption of the various States upon different subjects. The last meeting was held at Milwaukee, August 21st to 26th, 1912. (Incidentally the State of Iowa was not represented at that meeting.)

At the Milwaukee meeting there were thirty-four States represented and there were reports from the following regular standing committees of the Conference: Commercial Law, Wills, Decedent and Distribution, Marriage and Divorce, Insurance, Con-

gressional Action, Appointment of New Commissioners, Uniform Incorporation Laws, Torrens' System and Registration of Title to Land, Banks and Banking, and Publicity.

As a result of the efforts of this Conference, statutes relating to the "Warehouse Receipts Act" have been adopted by twenty-four States; "Negotiable Instrument Act" in forty States; "Sales Act" in nine States; "Divorce Act" in three States; "Stock Transfer Act" in five States; "Bills of Lading Act" in nine States; "Act relating to Wills executed without the State," seven States; "Act relating to family desertion," four States. Of these various statutes, Iowa has adopted the "Negotiable Instrument Act," the "Warehouse Receipts Act," and the "Bills of Lading Act."

In the report of this Conference will be found some very interesting information as to what they are doing in the various States with reference to uniformity, and at the last meeting additional committees were appointed as follows: Purity of Articles of Commerce, Vital and Penal Statistics, Child Labor Regulation, Compensation for Industrial Accidents, Situs of Real and Personal Property for Purpose of Taxation, Special Committee to Coöperate with the American Institute of Criminal Law and Criminology, Uniform Law Relating to Boilers and their Inspection, Expert Testimony in Criminal Proceedings, Regulation Relating to the Use of the Flag, Committee on Computation of Time.

The importance of these matters can perhaps be somewhat illustrated by the law with reference to the witnessing of wills in various States. For instance, in Iowa a will witnessed by two disinterested individuals is good and may be probated, while in certain other States, the will in order to be probated must be witnessed by three witnesses; so that a will perfectly good, executed in the State of Iowa may be absolutely invalid if the testator removes to another State, and his whole property may be disposed of in a manner not desired by him. There can be no valid reason why there should not be uniformity as to requirements of the witnessing of a will. It is not the purpose of this committee to go into the questions raised and discussed by the Conference of Commissioners for the reason that these discus-

sions are all in print and may be obtained for the asking by addressing Charles Thaddeus Terry, 100 Broadway, New York City.

Your committee desires to call your attention to the question of the laws with reference to the extradition of persons accused of crime and of the law with reference to the obtaining of witnesses, especially in criminal proceedings when said witnesses are non-residents of the State. Of course, it is doubtful if any law in any State or in all the States could be so framed as to allow the bringing of witnesses from one State into the other, but when you consider that a murder may be committed in Sioux City which is witnessed by only one man and that man is across the river in Nebraska walking about the streets and there is no way of procuring his testimony nor of compelling his attendance, while the accused man is under arrest and demanding trial, and it is necessary to release him for want of the testimony of this one witness, it is apparent some relief is necessary if possible.

In extradition cases the same rule applies. This same murderer may live in the State of Iowa and go to Nebraska, walking the streets openly. Extradition is asked for and the county attorney is required to go to Des Moines to have his papers signed, then to Lincoln to obtain papers from the Governor of Nebraska, and in the meantime the criminal goes across the line into South Dakota and this same proceeding must be gone through with unless he can be arrested on some trumped up charge and held until the extradition papers are properly obtained.

The only recommendation that your committee desires to make to the Association at this time is that a really live, active committee on Uniform Laws be appointed that will make such a report as will conclusively show to the Association the importance of this subject.

Respectfully submitted,

COMMITTEE ON UNIFORM LAWS,
N. D. ELY, *Chairman.*

SENATOR SAUNDERS: I move you that it be made the duty of the President-elect to confer with the Governor of the State of Iowa from time to time, so that Iowa may be hereafter repre-

sented in these National Meetings of the Association referred to by Mr. Ely.

The motion was duly seconded and carried.

THE PRESIDENT: Next we have the Report of the Committee on Taxation, J. H. McConlogue, Chairman.

REPORT OF COMMITTEE ON TAXATION

MR. MCCONLOGUE: The Chairman of this committee took up the matter of making a report to this Association, with the other members of the committee, and with that usual unselfishness so peculiar to the personnel of our profession, the other members have told me and almost made me believe I was the only man on the committee to make that report. They also said, whatever I reported would be endorsed.

I take it that a report of a committee of this character should convey to the Association something new, something important. I do not think there is anything new I can say to this Association on the matter of taxation. I think the people generally, throughout the State, excepting the majority of the members of the Legislature, are aware of the fact that Iowa in the administration of taxation laws is away behind every State in the Union; that our administration of the taxation laws is chaotic and unworthy of an intelligent people. I have said this so often in different ways, that I am afraid I am repeating myself.

I do believe this Association, when they are so anxious to look after the Davenport Bar, should take up this great question of taxation and bring about something that will make it worth while. Not complaining at all of the laws as they stand on the statute books with reference to what should be done, the whole evil lies in the administration of the law and the machinery of the law. Twenty-seven hundred assessors without the guide of the law, going out and valuing different classes of property in the State, without reference to the results to the citizens generally! Think of it.

The Commission that was appointed by the Legislature, of which unfortunately I was a member, went into the question of taxation and the gathering and levying of taxes thoroughly,

investigating the laws of nearly every State in one way or another, and we reached the conclusion, and submitted to the Legislature a plan of levying and collecting taxes, and while this did not go as far as I thought it ought to, I think it was a step in the right direction. Our committee are unable to tell you exactly just how you should proceed, but I think that the creation of a tax commission was a wise thing, and it will be well, and I so report, that that committee be continued in its work. There did not seem to be any disposition on the part of the committee to get together and formulate any proper, systematic report, so I have told you about all I can at this time.

THE PRESIDENT: I should say, perhaps, while our Constitution provides for a section upon taxation, that that section has not had any vitality for the last three or four years. The Chairman thought it proper to name the committee again, although they have abandoned their sectional meetings. It seems to me, that this is a field where we should do some constructive work. Our tax laws are in a chaotic condition. I do not know just what we ought to do, whether continue this committee and try and get them to have sectional meetings at our next Bar Association meeting, which will necessitate probably three days of the session, or whether to go along and let things slide without doing much of anything. I really feel myself that this committee ought to be continued and some time be given to this question of taxation, which will be before the next meeting of the Legislature.

JUSTICE S. M. WEAVER: I move you that the Committee be continued with the request that they furnish a formal report at our next meeting.

The motion was duly seconded and carried.

THE PRESIDENT: We will next hear the Report of the Committee on Constitution and By-Laws, Mr. A. T. Cooper, Chairman.

REPORT OF COMMITTEE ON CONSTITUTION AND BY-LAWS

MR. A. T. COOPER: I have prepared, as Chairman of the committee, a number of amendments to our Constitution. I think it

is fair to say, this Constitution is substantially in the same form it was in 1874 when this Association was organized; we are running under the same machinery and the same plans. There have several things developed in the administration of the affairs of this Association. One is, that out of six hundred members one hundred and sixty are delinquent in their three dollar annual dues; some of these members owe this Association \$24.00 to date, and the whole one hundred and sixty owe the Association \$1600, and more. It has occurred to me as Chairman of your committee—and I was innocently put on that committee, without knowledge of these things—that there was something wrong with the method upon which we are proceeding; we have gotten on the wrong track. Therefore, I prepared some amendments, not very many, but I think they are quite serious, and Mr. Haines and I have agreed on all the amendments but one.

With that preliminary, I am going to read you the amendments proposed. The first one is on membership. I can state the present situation better and clearer than by reading it to you. The rule provides now, that when a member becomes delinquent in his dues, he may be dropped from the roll. I take it, all those members who owe this Association to-day, imagine they have been dropped from the roll. We have the right to carry them on the roll under this rule; so I think they are running along thinking they are not members. I think it is time to have a change, and that the lawyers of Iowa ought to join this Association for life and not for a day. So I prepared this amendment:

The membership of this Association shall be composed: first, all the members of the bar of Iowa who are now members of this Association, as shown by the present roll; and second, all other members of the bar of Iowa who shall apply in writing for membership in this Association and be recommended and elected, as shall be provided in the by-laws.

Now, the amendment of the by-laws, Rule VIII, is as follows:

Any member of the bar of Iowa in good standing (which good standing will be presumed until the contrary is made to appear) may become a member of this Association by complying with the following:

1st. He shall sign such written application as shall be provided by the Executive Committee, and shall be recommended in writing by at least two members of the Association, and shall receive at the annual meeting following his application a majority vote of the members present.

And then I provided further that:

Section 2. Any gentleman learned in the law may be elected to honorary membership in this Association by a majority vote of the members of the Association present on written resolution by any member of the Association; but, no action shall be taken on such resolution until it has been referred to the Executive Committee, which shall report back at the same session in time to be duly acted upon. Honorary members shall not be entitled to serve on committees or vote or hold office in this Association.

I believe under that system, members coming in here will understand they are here for life and not subject to be dropped for not paying their dues. There was a time when some lawyers didn't pay their debts. That is past now. It seems to me it is up to us to adopt a method to take away this tendency to become in arrears.

The next suggestion I have here is standing committees, which is not very much of a change, and is as follows:

ARTICLE VI

STANDING COMMITTEES. Section 1. There shall be the following standing committees, who shall be elected by the Executive Committee from the members of the Association at the first meeting of the Executive Committee after the adjournment of each annual meeting of the Association, to-wit:

1st—On Membership.

2nd.—On Grievances.

3rd—On Law Reform.

4th—On Legal Education and Admission to the Bar.

5th—On Legal Biography.

6th—On Constitution and By-Laws.

The only thing added to the section just read, is the Committee on Constitution and By-Laws.

Section 2 is as follows:

No member of this Association shall be eligible to appointment or shall serve on more than one standing committee in this Association in the same year.

That came about, because one of my colleagues is a member of three different committees and had too much to do. The corresponding section in the by-laws is as follows:

The Committee on Membership shall be composed of as many members as there now are or shall hereafter be congressional districts in the State, one member thereof shall be appointed from each of said districts.

The next suggestion is Fees and Dues:

There shall be no admission fees in this Association.

At the present time our Constitution provides that you shall the first year pay an admission fee and you don't pay any dues that year. I have stricken that out, making the dues begin at the time of the admission to the Association.

Section 2 provides:

The annual membership dues shall be such sum and shall be due and payable and become delinquent at such times and places as shall be provided in the by-laws.

The by-laws make this provision:

The annual dues shall be \$3.00 and shall become due and payable on the opening day of each annual meeting of the Association and when admitted to membership and shall become delinquent on the first day of August following.

Section 2 is perhaps the most important:

All annual dues shall be payable at the place of residence of the Treasurer, whose duty it shall be to collect the same.

That will enable the Treasurer to draw on delinquent members and put it up to them in a substantial way. It might look to some of you as if it was intended that the Treasurer shall bring suit against the members. I do not think that will be necessary.

I ask that Rule III be amended by adding to it:

And perform such other duties as may be required by resolution or motion duly adopted, or as may be provided in the by-laws.

I ask that Article X be repealed and the following substituted:

BY-LAWS. Section 1. This Association shall have proper by-laws not inconsistent herewith for the government and control of the officers, committees and business of the Association, which shall be adopted and may be changed as shall be provided in the by-laws.

The by-laws provide that "the Constitution may be amended at any meeting by a two-thirds vote," or by a majority vote if the amendment is proposed at a prior meeting. The by-laws also provide that each member of the membership committee shall take charge of and conduct in his congressional district a canvass of each member of the bar therein who is not a member of the

State Bar Association, and for the purpose of such canvass shall appoint in each county in his district (with the power of removal and substitution) three members of the Association, naming one of them as chairman, who shall when provided with the necessary blank supplies, personally canvass each member of the bar in their respective counties not then a member of the State Bar Association," etc.

These amendments precede sections 1, 2, and 3 of the old rules. I therefore recommend that sections 3, 4, 5, 6, and 7 of the rules be reenacted as Sections 6, 7, 8, 9, and 10, simply changing the numbers.

As to Rule XII, we ask that Sections 1 and 2 of Rule XII be stricken out and the following substituted:

RULE XII. Section 1. Any by-law may be suspended by unanimous consent of those present.

Section 2. These by-laws may be amended at any regular meeting by a two-thirds vote of the members present or by a majority of those present when the amendment has been proposed in writing and is laid over until the next annual meeting.

Now, we come to Rule IX, which is:

The annual dues shall be three dollars and shall become due and payable on the opening day of each annual meeting of the Association and when admitted to membership and shall become delinquent on the first day of August following.

Section 2. All annual dues shall be payable at the place of residence of the Treasurer, whose duty it shall be to collect the same.

Now, Brother Haines's suggestion of Rule IX is this:

RULE IX. Registration Fees. Every member present at any annual meeting shall register with the Secretary of the Association and pay a registration fee of \$3.00. Any member who is not present at any annual meeting may be registered upon written request, accompanied by the registration fee. No member shall be entitled to participate in the meetings or enjoy any other privilege as a member during any year in which he has not registered.

I think these amendments will put us on a better basis and will avoid this delinquency trouble.

I therefore move that this report be adopted and that our Constitution and By-Laws be amended in accordance with my recommendations.

THE PRESIDENT: I understand the committee is not agreed. I think it would be wise to hear from the other member of the committee.

MR. R. M. HAINES: So far as the amendments proposed are concerned, other than Rule IX, I think there is no divergence of opinion among the members of the committee.

I am opposed personally, and I believe the other member of the committee is also, to the suggested change of Rule IX. In the first place we do not believe it complies with the laws of Iowa. We do not believe that by a mere enactment of this Association, the venue can be changed and a right of action given the Treasurer in his own county against members in other counties. Then again, you all know, that no Treasurer of this Association is going to undertake the commencement and prosecution of actions in any court to collect from the delinquent members of this Association their little subscription of three, or six dollars. If he did do it, he ought to be disbarred, because the costs would eat up the proceeds. We do not need very much money in this Association. About the only expense we have is that of printing the proceedings and the expenses of the annual convention. It is necessarily true that the great body of the bar cannot attend our convention. It is unfortunately true that perhaps the great body of the bar do not take the interest in the Bar Association they should. After all, the important thing in this Association is to bring us into personal relationship, regardless of the money. The money is simply an incidental matter. It seems to me proper that the expense of this Association should be paid by those persons who derive the benefits of the Association by attending the meetings and by securing copies of the annual proceedings.

Therefore, we suggest, in order that it may not be necessary to cut down the list of membership—hundreds of good lawyers simply get behind, have been negligent—that we each year charge a registration fee from every man who attends the Convention, and also permit any member not present to register and secure a copy of the proceedings. I believe that will furnish all the revenue we need and keep the membership roll in better shape than now, and save the trouble and annoyance that comes from enforcing collection fees.

Therefore, I hardly want to put it in the form of a motion; I will put it in the form of a suggestion, that there might be an adoption of the report so far as it affects any matters outside of Rule IX.

MR. D. D. MURPHY: I think I am speaking the mind of a good many here, when I say, we really don't know just what is before this house. It is an important matter and it should have a little more thought and time. If we should vote on this now, we would be voting without any intelligence.

I move you that the whole matter be referred to some appropriate committee to make a formal report and send it to the members, and let the whole matter be disposed of at the next meeting. We are in no great danger at the present. (The motion was duly seconded.)

SENATOR SAUNDERS: I move as an amendment that the report be printed in full in the proceedings of this meeting, so that every member can have a copy of it and an opportunity to study it.

MR. MURPHY: I accept that amendment.

MR. COOPER: May I add to that motion, that it will be referred to the Committee on Constitution and By-Laws?

THE PRESIDENT: That will follow, as a matter of course.

JUDGE J. J. CLARK: It seems to me, if the committee having this thing in hand has investigated it, made a formal report, and are agreed on everything except one article, this report should be adopted. I think the reason we do not understand it is because we have not listened to it. There is a good deal of noise and conversation, and we have not paid attention to it. If we refer this to some other committee, it will come up in the same form and be referred again, and we will have another instance of the law's delay. I think we ought to attend to a matter like this promptly. I do not see any reason why this report should not be adopted, with the exception of the article the committee disagrees on, and that can be left for further discussion and reference.

A MEMBER: I was about to make the same suggestion Judge Clark made. As long as the Committee has agreed on all of these propositions, except one, there seems to be no reason why this matter should go over. I make the same motion the first gentleman made, that all these proposed amendments except the one applying to Rule IX, be now adopted by the Association.

THE PRESIDENT: The Chair has already recognized the motion to postpone and re-commit.

The motion to postpone and recommit was duly carried.

SENATOR C. G. SAUNDERS: I move you, that the committee that is hereafter appointed on Constitution and By-Laws be directed to print this report in pamphlet form, along with their report, and cause it to be mailed to each member of the Association not less than ten days before the next annual meeting. (The motion was duly seconded.) My reason for this is: this report will be printed in the proceedings; we will not have accessible the report of the new committee. Now then, if we put it in pamphlet form, we have the report of the old committee, in addition we will have the report of the new committee, and thus every member can make his own comparisons.

THE PRESIDENT: The motion is, that the report of this new committee on Constitution and By-Laws be printed and sent out to the members ten days in advance of the next meeting.

The motion was declared carried.

THE PRESIDENT: There was a special committee appointed at the last meeting, to consider the matter of reprinting the early Iowa Bar Association Proceedings. The Secretary will present the report of this special committee.

**REPORT OF COMMITTEE TO CONSIDER FURTHER REPRINTING OF
EARLY BAR ASSOCIATION PROCEEDINGS**

To the Iowa State Bar Association:

Your committee appointed to consider the advisability of securing further reprints of the early Bar Association Proceedings

desires to report that it has not seemed advisable to secure further reprints. First, for the reason that the expense of so doing would have been considerable, and, secondly, that there is a fair supply on hand to meet our needs for a considerable time to come, if carefully guarded. These Proceedings have already been placed in practically all of the public libraries of the State and a large number distributed to the members of the Association, leaving a fair supply remaining for exchange with other libraries and for private collections.

Respectfully submitted,

H. E. DEEMER,

H. C. HORACK,

A. J. SMALL,

Committee.

THE PRESIDENT: Unless some action is desired on this report it will follow the usual course, be received and placed on file.

This is the time when we should have petitions, memorials and resolutions, if any are to be offered.

MR. N. D. ELY: I have two resolutions here with reference to disbarment proceedings I would like to have referred to the Committee on Grievances. (It was so ordered.)

THE PRESIDENT: This completes the business of the morning. The first address is to be made by a gentleman who needs no introduction to the bar of Iowa. I mean, of course, Judge Smith, of the United States Circuit Court of Appeals, who will read to us a paper upon "The Life and Public Services of James Wilson." I have the honor of introducing to you Judge Walter I. Smith.

THE LIFE AND PUBLIC SERVICES OF JAMES WILSON

Honorable James Wilson was born in Scotland, near St. Andrews, September 14, 1742. He early attended school at St. Andrews, the metropolis of the ancient Pictish Kingdom and noted for its university founded in 1411. He afterwards attended the universities of Glasgow and Edinburgh. His education was largely classical but included, with other studies, rhetoric and logic under distinguished professors of his time.

About 1765, when close to twenty-three years of age, he came to America and located in New York. Various authors have given the date of his migration to America as 1763, 1764, 1765, and 1766. In any event he reached Philadelphia in 1766 where he obtained employment through Dr. Richard Peters as an usher in the Philadelphia College and Academy. He was pronounced by one who examined him the best classical scholar who had offered as a tutor in the Latin department of the College. He only held this place for a few months when he entered the office of John Dickinson to study law. He was afterwards to sit as the colleague of his preceptor in the Continental Congress. He studied law for two years and then established himself in the practice at Reading but soon moved to Carlisle and continued to reside there until after his election to the Continental Congress. Early in his practice he acquired considerable reputation by his argument in a suit between the proprietors of the colony and Samuel Wallace.

As the time approached for the American Revolution he was conspicuous as an advocate of the patriot cause. He was a member of the Provincial Convention of Pennsylvania, which met in the summer of 1774, and the same summer published a treatise on the legislative authority of the British Parliament which had been prepared by him considerably prior thereto. The colonists had largely conceded the power of Parliament to enact navigation laws and laws imposing duties upon articles imported into the colonies but disputed its authority to legislate upon their internal affairs. Mr. Wilson took the position that Parliament had no power to bind the colonies in any manner whatsoever, even if it specifically mentioned them in the act. He cited numerous English decisions tending to sustain this position, the decisions having been rendered in reference to Ireland, Jamaica, and Virginia. He contended that the colonies owed allegiance to the crown but not obedience to the Parliament of England.

He was chosen colonel of a regiment of militia raised in Cumberland County and was in charge of the public stores and magazines in Carlisle but he never rendered any substantial military service. He was elected by the Assembly of Pennsylvania as a member of the Continental Congress on May 6, 1775,

and was reelected November 3, 1775, July 20, 1776, and March 10, 1777.

The State of Pennsylvania had adopted a new Constitution on September 28, 1776 which provided that the new Assembly should be chosen on the first Tuesday of November of that year and on the second Tuesday of October annually thereafter. It was thus the first Assembly which was in session on September 14, 1777. The Constitution of 1776 also provided:

Sec. 11. Delegates to represent this state in congress shall be chosen by ballot by the future general assembly at their first meeting, and annually forever afterwards, as long as such representation shall be necessary. Any delegate may be superseded at any time, by the general assembly appointing another in his stead.

Mr. Wilson had been elected by this Assembly on March 10, 1777, and would normally have held until the meeting of the next Assembly and its action but on September 14, 1777, he and George Clymer were, under the provision of the Constitution quoted, superseded by the General Assembly of Pennsylvania, thus making them conspicuous among the early victims of the recall. The reason for this is found in the issues which arose in Pennsylvania on the Constitution of 1776. Its friends were known as Constitutionalists, its enemies as Republicans. Mr. Wilson associated with the latter party and upon the complete temporary ascendancy of the Constitutionalists he was superseded as a member of Congress.

His activity and prominence in the Continental Congress is illustrated by his appointment, in less than two and a half years, on sixty-four committees. Pennsylvania had at first not authorized its members to vote for independence but finally did so and Mr. Wilson spoke, voted for, and signed the Declaration of Independence. After his removal from Congress he located for a year at Annapolis, Maryland, at the end of which time he took up his residence permanently in Philadelphia. He did not return to Congress until the war was practically ended. He was reelected November 12, 1782, and took his seat January 2, 1783, was again chosen a member April 7, 1785, attending April 26th, and finally was elected and took his seat March 22, 1786.

It is not unworthy of note that his later elections were after the

adoption of the Articles of Confederation under which it was expressly stipulated:

ARTICLE V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

During his absence from Congress in June, 1779, he was appointed Advocate-General of France in the United States. Heretofore he had been a student of the laws of England and America with such study of the ancient systems as was incident thereto and to a liberal education. He now found it necessary to, and did, become a close student of the laws of France. In 1781 Bushrod Washington, son of John A. Washington, a younger brother of General Washington, came to Philadelphia to study law with Wilson. General Washington paid Wilson one hundred guineas for tutoring this nephew who was destined to succeed Wilson on the Supreme Bench.

It has almost been forgotten that on December 31, 1781, after the adoption by all the States of the Articles of Confederation, the Continental Congress passed an ordinance incorporating the Bank of North America and James Wilson was appointed one of its first directors. Subsequently, in 1782, the legislature of Pennsylvania granted a charter of incorporation to the same bank. This act was repealed in 1785 but Mr. Wilson issued an elaborate argument against its repeal. He insisted the Continental Congress had power to charter the bank and it was here that he first announced that the United States constituted a nation, and a careful reading of this paper will show his mind was then running upon the proposition that the *United* Colonies were free and independent but that they were never independent of each other.

The Continental Congress called the Constitutional Convention for the second Monday in May, 1787, which fell on the fourteenth of the month. Mr. Wilson was chosen, with Benjamin Franklin, Robert and Gouveneur Morris, and four others, as a delegate from Pennsylvania. Major William Pierce, of Georgia, who was also

a delegate, has left this character sketch of Wilson which fairly indicates the rank he held among his contemporaries :

Mr. Wilson ranks among the foremost in legal and political knowledge. He has joined to a fine genius all that can set him off and show him to advantage. He is well acquainted with Man, and understands all the passions that influence him. Government seems to have been his peculiar Study, all the political institutions of the World he knows in detail, and can trace the causes and effects of every revolution from the earliest stages of the Grecian commonwealth down to the present time. No man is more clear, copious, and comprehensive than Mr. Wilson, yet he is no great Orator. He draws the attention not by the charm of his eloquence, but by the force of his reasoning.

The Convention had no quorum until May 25, 1787, and it remained in session until September 17, 1787, substantially four months. There were many plans for the revision of the Articles of Confederation—almost as many as there were members of the Convention. On May 29, 1787, Mr. Edmund Randolph of Virginia, introduced a series of resolutions as to what the Constitution should contain which became known as the "Virginia Plan". On the same day Mr. Charles Pinckney of South Carolina, proposed a plan. New York and Connecticut were opposed to any departure from the principles of the Confederation and sought simply to add a few new powers to Congress rather than to support a national government. New Jersey and Delaware were opposed to a national government because the friends of such considered a proportionate representation of the States as the basis of it. The result was the preparation of what became known as the "New Jersey Plan," by the representatives of these four States and perhaps by Luther Martin of Maryland. This plan was presented on June 15, 1787, by Mr. Patterson. June 18th Alexander Hamilton presented a fourth plan. The Virginia and New Jersey plans were chiefly considered. Mr. Wilson contrasted these plans substantially as follows :

1. Under the Virginia plan there would be two, and in some degree three, branches of the national legislature.

Under the New Jersey plan there was to be a single house.

2. The Virginia plan contemplated direct representation according to numbers and importance of the people in Congress.

The New Jersey plan contemplated the election of members of Congress by the State legislatures without regard to numbers and importance.

3. The Virginia plan provided for a proportionate right of suffrage in Congress.

The New Jersey plan for equality among the States.

4. The Virginia plan provided for a single executive.

The New Jersey plan for a plural executive.

5. Under the Virginia plan a majority of the people of the United States must prevail.

Under the New Jersey plan a minority may govern.

6. Under the Virginia plan the National Legislature are to make laws in all cases in which separate States are incompetent.

Under the New Jersey plan Congress is to have additional powers in a few cases only.

7. Under the Virginia plan Congress is to have a negative on the laws of the States contrary to the union or treaties.

Under the New Jersey plan there is no such power unless it be to the executive to compel obedience by force.

8. Under the Virginia plan the executive is to be removed upon impeachment and conviction.

Under the New Jersey plan he is to be removed on the application of the majority of the State executives by Congress.

9. Under the Virginia plan the executive to possess a qualified veto power.

Under the New Jersey plan to have none.

10. Under the Virginia plan to create inferior judicial tribunals.

Under the New Jersey plan none, but to rely upon the State courts with right of appeal to the Supreme Court of the United States.

11. Under the Virginia plan the jurisdiction of the national tribunal to extend to cases of national revenue.

Under the New Jersey plan only by appeal.

12. Under the Virginia plan the jurisdiction of the national tribunal to extend to cases that may involve the national peace.

Under the New Jersey plan only limited and appellate jurisdiction.

13. Under the Virginia plan the National Constitution to be ratified under the authority of the people by delegates expressly appointed for that purpose.

Under the New Jersey plan the Articles of the Confederation must be confirmed by the legislatures of every State.

While there were many minor differences the Convention made the Constitution substantially from the Virginia plan. On July 24, 1787, he was chosen by ballot one of the committee of five on detail to which was referred the preparation of the Constitution.

Mr. Wilson was conspicuous throughout the debates. He advocated two houses of Congress but was opposed to the legislatures of the States having anything to do with the election of either. He wanted that members of the House should represent equal numbers of constituents and earnestly insisted the same rule should apply to the Senate, and advocated the direct election of Senators by the people. This was due more to his opposition to any connection between the Federal and State governments than to any of the causes which have recently prevailed. It is but just to say, however, that though he suffered a number of outrages at the hands of the people he believed and trusted in them and thought that if they decided a question without fully understanding it or through bias that was an incident to their right to determine it and must be abided by and accepted.

He advocated the publication of the proceedings of Congress on the ground that the people have a right to know what their agents have done or are doing. In pursuance of his policy to sever the Federal and State governments, he opposed the payment of members of Congress by the States and advocated their payment out of the general treasury. He submitted the motion, which carried by a vote of nine States to two, to strike out of the proposed draft of the Constitution the words "and emit bills on the credit of the United States." He did this upon the theory that the absence of such a provision from a limited charter of government would preclude the issuance of legal tender paper,

but the decision in the *Legal Tender Cases*, 12 Wallace 457, shows how he succeeded yet failed.

He was strenuously opposed to equal representation of the States in the Senate and advocated the districting of the United States for Senators, and insisted that the Senators should vote individually and not one vote to a State. In further pursuance of his opposition to any union between the Federal and State governments he opposed the filling of vacancies in the Senate by the governors of States.

He criticised the counting of three-fifths of the slaves in the apportionment for representatives, saying, "Are they admitted as citizens? Then why are they not admitted on an equality with white citizens? Are they admitted as property? Then why is not other property admitted into the computation?" Again, in discussing the slavery question, he said: "As the section now stands all articles imported are to be taxed; slaves alone are exempt. This is in fact a bounty on that article."

He advocated a single executive and wanted him elected by the people. He took this position in opposition to those who wanted a plural executive and to those who wanted a single executive elected by Congress or by the legislatures of the several States. In the modern evolution of politics the Electoral College has become a useless article and yet this mistake of the makers of the Constitution has become in many ways a blessing. The Electoral College has two features—it provides for fixing the number of votes a State may cast and thus limits the power of each State in the Presidential election and this feature must not be lost sight of. It then provides for the State choosing electors of its authorized number. The latter might well be dispensed with if the former be retained. No reason in our day can be assigned why the people should not vote directly upon the President and Vice-President, if a fixed limitation upon the State's influence be maintained by limiting its vote to the number of Senators and Representatives from that State.

It is far from my intention to bring any political considerations into this paper, and least of all to again seek to arouse any sectional or racial controversy, but ever since the overthrow of the so-called "carpetbag" governments of the South it has been

at least the popular belief in the North that the negro vote has been suppressed, directly or by grandfather clauses and the like. The North has, rightfully or wrongfully, become reconciled to this and will probably never consent to take charge of the polls in the South. A popular election by the people is utterly impossible where there is not equality of requirement as to the right to vote.

Should the time ever come when we had a direct election of the President by the people and New York, Ohio, Indiana, and the great doubtful States of the North declare for one party by one hundred thousand majority apiece and this should invariably be overcome by majorities cast in States where one-half the people were excluded from the ballot box, one of two results would necessarily follow. Either the North would engage in a fraudulent effort to overcome the majorities in the South and the so-called Presidential election become a mere saturnalia of fraud, or a revolution would break out and the government be overthrown by force of arms. It is now proper to abolish the Electoral College and vote directly upon President and Vice-President, but the limitation put by the Fathers upon the influence of each State in the Presidential elections must be preserved if we would save the republic in fact and not in mere name.

He advocated encouraging immigration and declared that almost all general officers of the army from Pennsylvania in the Revolution were foreigners. He opposed the limitation of the right to vote to freeholders. He declared that strictness was not necessary in giving authority to enact penal laws though necessary in enacting and expounding them. Mr. Wilson advocated an absolute veto, as distinguished from the limited veto now enjoyed, and the Convention at one time voted to make the requisite vote to overthrow a veto three-fourths instead of two-thirds as finally provided in the Constitution. He favored a short term for the President and to make him reëligible. He was in favor of providing for the impeachment of the President but consistently opposed giving any portion of this power to the States. The draft of the Constitution provided for the election of judges by Congress. He succeeded in getting this revised to provide for their appointment by the executive with the consent

of the Senate. There was a considerable party opposed to any Federal judicial tribunals inferior to the Supreme Court, and it was upon the motion of Mr. Wilson that Congress was vested with the power to create them.

He was opposed to abolishing the States, but advocated vesting in Congress the power to negative all laws passed by the several States interfering in the opinion of the Congress with the general interests and harmony of the Union. He called attention to the wording of the Declaration of Independence that "These *United* Colonies are and of right ought to be free and independent States," and declared that this was a declaration that the *united* colonies not the *separate* colonies were free and independent; that they were free and independent, not individually but collectively. That "the States under the Confederation are not sovereign States—they can do no act but such as are of a subordinate nature or such as terminate in themselves—and even then in some instances they are restrained."

He opposed submitting the Constitution for ratification to the State legislatures and insisted that it be submitted to the people of the several States. Thus we find that at every stage of the consideration of the Constitution he was the firm advocate of the proposition that the people are the sovereign.

No sooner had the Constitutional Convention adjourned than he was in the thick of the fight for its ratification. He was elected a delegate to the Pennsylvania Convention. In that convention he said:

I have reason to think that a difficulty arose in the minds of some members of the convention from another consideration—their ideas of the temper and disposition of the people, for whom the Constitution is proposed. The citizens of the United States, however different in some other respects, are well known to agree in one strongly marked feature of their character—a warm and keen sense of freedom and independence. This sense has been heightened by the glorious result of their late struggle against all the efforts of one of the most powerful nations of Europe. It was apprehended, I believe, by some, that a people so high spirited would ill brook the restraints of an efficient government. I confess that this consideration did not influence my conduct. I knew my constituents to be high spirited; but I knew them also to possess sound sense. I knew that, in the event, they would be best pleased with that system of government, which would best promote their freedom and happiness. I have often revolved this subject in my mind. I

have supposed one of my constituents to ask me, why I gave such a vote on a particular question? I have always thought it would be a satisfactory answer to say—because I judged, upon the best consideration I could give, that such a vote was right. I have thought that it would be but a very poor compliment to my constituents to say, that, in my opinion, such a vote would have been proper, but that I supposed a contrary one would be more agreeable to those who sent me to the convention. I could not, even in idea, expose myself to such a retort as, upon the last answer, might have been justly made to me. Pray, sir, what reasons have you for supposing that a right vote would displease your constituents? Is this the proper return for the high confidence they have placed in you? If they have given cause for such a surmise, it was by choosing a representative, who could entertain such an opinion of them.

Again he said:

After a period of six thousand years has elapsed since the creation, the United States exhibit to the world the first instance, as far as we can learn, of a nation, unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government, under which they would wish that they and their posterity should live.

And:

One thing is very certain, that the doctrine of representation in government was altogether unknown to the ancients. Now the knowledge and practice of this doctrine is, in my opinion, essential to every system, that can possess the qualities of freedom, wisdom, and energy.

Again:

Whatever object of government is confined in its operation and effects within the bounds of a particular state, should be considered as belonging to the government of that state; whatever object of government extends in its operation or effects beyond the bounds of a particular state, should be considered as belonging to the government of the United States.

And:

To control the power and conduct of the legislature by an overruling constitution, was an improvement in the science and practice of government reserved to the American States.

And:

Oft have I viewed with silent pleasure and admiration the force and prevalence, through the United States, of this principle—that the supreme power resides in the people; and that they never part with it. It may be called the panacea in politics. There can be no disorder in the community

but may here receive a radical cure. If the error be in the legislature, it may be corrected by the constitution; if in the Constitution, it may be corrected by the people. There is a remedy, therefore, for every distemper in government, if the people are not wanting to themselves. For a people wanting to themselves, there is no remedy: from their power, as we have seen, there is no appeal: to their error, there is no superior principle of correction.

And:

The advantages of a monarchy are, strength, despatch, secrecy, unity of counsel. Its disadvantages are, tyranny, expense, ignorance of the situation and wants of the people, insecurity, unnecessary wars, evils attending elections or successions.

The advantages of aristocracy are, wisdom, arising from experience and education. Its disadvantages are, dissensions among themselves, oppression to the lower orders.

The advantages of a democracy are, liberty, equal, cautious and salutary laws, public spirit, frugality, peace, opportunities of exciting and producing abilities of the best citizens. Its disadvantages are, dissensions, the delay and disclosure of public counsels, the imbecility of public measures retarded by the necessity of a numerous consent.

At another time in this same Convention he said:

If a law should be made inconsistent with those powers vested by this instrument in Congress, the judges, as a consequence of their independence and the particular powers of government being defined, will declare such law to be null and void. For the power of the Constitution predominates. Anything, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law.

Scarcely was the Constitution adopted when Wilson was again a member of the Pennsylvania Convention called to revise the State Constitution and adopt a substitute for the Constitution of 1776, the struggle against which had cost Wilson his seat in Congress. He drew the form of the Constitution of 1790. Again he was fighting for the right of the people to be represented directly in the Senate of the State and opposing the complicated system of their election by electors.

President Washington nominated him as one of the first six Justices of the Supreme Court under the Judiciary Act of September 24, 1789. He was confirmed on the 26th of September. There was little for the Supreme Court to do until cases could be tried and reach it on appeal, and the first duty of the new Jus-

tices was to proceed to the circuit. The first report in the list of United States Supreme Court reports, which is also known as the 1 Dallas, contains no decisions of the Supreme Court of the United States, but only decisions of the courts of Pennsylvania. The first term of the Supreme Court was the February term, 1790, and is found at star page 399 of the 2nd Dallas, and all of the opinions of the Supreme Court during the service of Mr. Justice Wilson are contained in the 2nd and 3rd Dallas.

On the 18th of April, 1792, in pursuance of his announcement in the Pennsylvania Convention which ratified the Constitution, while sitting in the Circuit Court of the District of Pennsylvania, he declared the law of Congress entitled, an "Act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established and to regulate the claims to invalid pensions," unconstitutional, because it sought to impose upon the Courts legislative and administrative duties, that is duties not judicial, and refused to enforce it. This was called to the attention of Congress by President Washington April 21, 1792.

At the February term, 1793, he concurred with the majority of the Supreme Court in the opinion in *Chisholm vs. Georgia*. That case resulted in the Eleventh Amendment to the Constitution of the United States which declares that, "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state."

The opinion of Justice Wilson, found in 2 Dallas, page 453, commences:

This is a case of uncommon magnitude. One of the parties to it is a State, certainly respectable, claiming to be sovereign. The question to be determined is, whether this State, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the Supreme Court of the United States? This question, important in itself, will depend on others, more important still; and may, perhaps, be ultimately resolved into one, no less radical than this—"do the people of the United States form a nation?"

A cause so conspicuous and interesting, should be carefully and accurately viewed, from every possible point of sight. I shall examine it, 1st. By the principles of general jurisprudence. 2nd. By the laws and practice of

particular states and kingdoms. From the law of nations, little or no illustration of this subject can be expected. By that law, the several states and governments spread over our globe, are considered as forming a society, not a nation. It has only been by a very few comprehensive minds, such as those of Elizabeth and the Fourth Henry, that this last great idea has been even contemplated. 3rd. And chiefly, I shall examine the important question before us, by the Constitution of the United States, and the legitimate result of that valuable instrument.

This is followed by a discussion of a dozen pages as learned and as luminous as any opinion ever found in the library of an American lawyer. If you have not read it do so. True it is that decision has been nullified, but was it wisely done? Read if you will *ex parte* Young, 209 U. S. 123, and the cases following it, and then tell me if it would not have been better if the Eleventh Amendment had never been written.

But not content with his duties upon the Supreme Bench of the United States Mr. Justice Wilson delivered a course of law lectures in the College of Philadelphia from 1790 to 1792. In this course of lectures he declared that in free countries law should be studied and taught as a historical science. He declared of the love of liberty and the love of law that:

Neither of them can be known, because neither of them can exist, without the other. Without liberty, law loses its nature and its name, and becomes oppression. Without law, liberty also loses its nature and its name, and becomes licentiousness.

He further suggests:

But it may be further asked—ought a judge to commit himself by delivering his sentiments in a lecture? To this question I shall give a very explicit answer: and in that answer I shall include the determination, which I have taken both as a professor and a judge. When I deliver my sentiments from this chair, they shall be my honest sentiments: when I deliver them from the bench, they shall be nothing more. In both places I shall make—because I mean to support—the claim to integrity: in neither shall I make—because, in neither, can I support—the claim of infallibility.

My house of knowledge is, at present, too small. I feel it my duty, on many accounts, to enlarge it. But in this, as in every other kind of architecture, I believe it will be found, that he, who adds much, must alter some.

It may be that the following is the parent of a more modern saying:

Remember that, in a free government, every honour implies a trust; that every trust implies a duty; and that every duty ought to be performed.

If you would see how he in these law lectures and prior writings anticipated the great decisions of Chief Justice Marshall in *Marbury vs. Madison*, 1 Cranch 137; in *Fletcher vs. Peck*, 6 Cranch 87, which involved, by the way, the alleged Yazoo fraud hereafter referred to; *McCulloch vs. Maryland*, 4 Wheaton 316; *Trustees of Dartmouth College vs. Woodward*, 4 Wheaton 518; *Cohens vs. Virginia*, 6 Wheaton 264, I refer you to the chapter by M. C. Klingelsmith on James Wilson in *Great American Lawyers*, Vol. 1, page 157.

He died August 28, 1798, while still less than fifty-six years old, at the home of his colleague on the Supreme Bench, Justice Iredell, at Edonton, North Carolina, and was interred in the family lot of Governor Johnston, who was a brother-in-law of Mr. Justice Iredell, at his country seat.

It seems necessary to briefly state some of the assaults made upon Mr. Justice Wilson during his life and after his death. Attention has already been called to the act of the Pennsylvania Legislature in recalling him from Congress as the result of his opposition to the Constitution of 1776 and of his party alignment. He was a Scotchman by birth and displayed the dogged disposition of his race. He was already unpopular but became much more so when, in the interest of his friend Morris and others, he denied the right of the town committee to regulate the price of food, and, as a lawyer accepted the defense in the prosecution of alleged Tories.

On October 4, 1779, he and thirty or forty of his friends were attacked by a mob of two hundred men, including a number of the militia. Shots were exchanged with the mob, one man and one boy were killed in the street, many were wounded, and Captain Campbell was killed and two others wounded in Wilson's house. At a critical moment Wilson and his friends were rescued by the First Troop of City Cavalry. The legislature decided to forgive the innocent as well as the guilty and passed an act of oblivion. Mr. Wilson was compelled to absent himself from Philadelphia for a time after this incident. He had been an ardent friend of American independence, voted for it, and signed

the Declaration of Independence, and yet he was charged with being an enemy of American independence. He was with Judge McKean burned in effigy at Carlisle where he had long lived.

Finally ruined by the panic which prevailed in 1796, 1797, and 1798, while still holding the office of Justice of the Supreme Court and sitting on the circuit at Edenton, North Carolina, he was arrested for debt upon process secured by Pierce Butler. He was ill at the time and by reason of that fact he was not taken to jail, but the arrest was withdrawn and he never recovered. Before his death he wrote his son that "the debt was originally none of mine," from which it is inferred it was a security debt.

These were but the incidents of a strong and vigorous life. But two charges have been made since his death. In 1822 Judge Johnson published a life of General Greene in which he charged that Wilson was actively in sympathy with the Conway cabal. Justice Wilson's son, Reverend Bird Wilson, was then alive and at once collected letters from friends of his father, including Justice Bushrod Washington, and upon their presentation to Judge Johnson he published a broad retraction, declaring that he did this in justice to Wilson's memory and "my own feelings. I acknowledge the error and express my extreme regret at having committed it."

His memory was not, however, to be always assailed by such gentlemen as Judge Johnson. I have great respect for the New York *Independent*, but on December 6, 1906, when Wilson had lain in the grave for one hundred and eight years, it published as an editorial a wanton libel upon him, the allegations of which in themselves seem impossible. In this article it dragged up the alleged fraud in the Yazoo land sales in Georgia in 1794 and 1795; charged James Wilson with a conspicuous part in them; that he went to Georgia with twenty-five thousand dollars in his saddle-bags with which he proceeded to bribe the members of the Georgia legislature. There is no truth in this charge except that Wilson was a stockholder to the amount of twenty-five thousand dollars in one of the Georgia Yazoo Companies. These charges were refuted in an elaborate article by M. C. Klingel-

smith in 47 *University of Pennsylvania Law Review* (N. S.), page 1.

When politely requested to give the name of the author of this libelous article *The Independent* replied :

The writer of the editorial of which you inquire was not one of the editorial staff of *The Independent*, but was written by an outside authority in whom we put confidence and he has been out of the country for most of the time since. I do not know that it would be of any use to hunt up his name and indeed I do not know his address.

It thus appears that the author of this defamatory matter "was not one of the editorial staff of *The Independent*," but was "one in whom we put confidence," who was permitted to masquerade as an editor of the great paper while maligning the name of a great and good man, then dead for more than one hundred years. But while he was one "in whom we put confidence" the article in question shows such ignorance of the history of his country as would have shaken the confidence of any but the most confiding editor.

In it he speaks of the "Constitutional Convention of 1788 which adopted our Federal Constitution." Most people know that that Convention adjourned September 17, 1787. The article also contained the statement that "the independent State of Georgia, as recognized by Great Britain in 1783, extended over its present state limits and also over all Alabama and Mississippi." Neither the provisional treaty concluded at Paris November 30, 1782, nor the definitive treaty concluded at Paris September 3, 1783, attempted to bound Georgia or any other colony, but simply bounded the United States, upon the south at the point in question by the thirty-first degree of latitude. In the second place a large part of Alabama and Mississippi were south of the thirty-first degree of latitude, were part of West Florida, and belonged at that time to Spain and much of the balance was claimed by Spain by right of conquest. The lands were claimed by the United States and the various States, except Georgia, had ceded their western lands to the Government. They were occupied not by whites, but by Indians who had the perpetual right of occupancy, and had been obtained by the blood of the Union and not of any particular State, and Georgia,

finally in 1802, followed the example of all her sister States and ceded her western lands to the Government.

The article in question continued, "Led by Patrick Henry certain avaricious Virginians formed 'the Virginia Yazoo Company' in 1789, and secured by various underhand means a sale of all the lands we now know as Alabama and Mississippi to themselves for about \$80,000." Again it is suggested that a large part of what we now know as Alabama and Mississippi lies south of thirty-one degrees of latitude and was outside the limits of the United States, but it is further suggested that these two States now embrace sixty-two million six hundred and forty-three thousand two hundred acres of land area, while the grant to the Virginia Yazoo Company was for eleven million four hundred thousand acres, a little over one-sixth of the area of the two States. True, at the same time the legislature granted the South Carolina Yazoo Company ten million acres and the Tennessee Yazoo Company four million acres, or a total of twenty-five million four hundred thousand acres. The total consideration to be paid by the South Carolina Yazoo Company was sixty-six thousand nine hundred and sixty-four dollars, and by the Tennessee Yazoo Company forty-six thousand eight hundred and seventy-five dollars, and by the Virginia Yazoo Company not eighty thousand, as stated in the article, but ninety-three thousand seven hundred and forty-one dollars.

The article continues—"President Washington observed their effort to create a vast landed oligarchy and crushed their ambitious plans with a message to Congress saying, 'unless this is checked it will endanger the very republic itself.'" This is wholly false. No message was ever sent to Congress upon the sale in question to the Virginia Yazoo Company. It is true that on February 17, 1795, President Washington sent a message to Congress concerning the action of the legislature of Georgia in passing the acts of December 28, 1794, and January 7, 1795. It must be borne in mind that the United States had received cessions of all the western lands except those of Georgia, and in this connection President Washington said: "These acts embrace an object of such magnitude and in their consequences may so deeply affect the peace and welfare of the United States that I have

thought it necessary to lay them before Congress." It thus appears that it is false that President Washington ever attacked the act of 1789 in reference to the Virginia Company, and he never said that "unless this is checked it will endanger the very life of the republic itself," and never made use of any similar expression with reference to that act or any other.

The article continues, "Federal opposition together with their inability to raise enough money which the Treasurer of Georgia would accept ruined the Virginians." The first of this is a fable. There never was any federal opposition of the character indicated. True the Federal government claimed to own the land subject to a perpetual right of occupancy in the Indians. It appears from Washington's diary that the question of the act of 1789 was considered in the cabinet, and in the works of Mr. Jefferson, Vol. 7, page 269, appears his report, made at that time, in which he states that relinquishment by the Indians of their right of possession can only be obtained by war or agreement, and that as all power to make war or treaties passed to the Federal Government under the Constitution, the State of Georgia had no power to confer upon the parties to these contracts a right which it did not enjoy, namely to purchase the possessory right of the Indians.

The South Carolina Yazoo Company made elaborate efforts to colonize their lands, and on August 26, 1790, President Washington issued his proclamation admonishing citizens to obey the "Act to regulate trade and intercourse with the Indian tribes," and to warn them against violating the treaties of November 28, 1785, and the 3rd and 10th of January, 1786. This was evidently aimed at representatives of the South Carolina Yazoo Company for the Virginia Yazoo Company was never active. Still more pointedly was this true of the proclamation of President Washington on March 19, 1791, for in that he names James O'Fallon who was the agent of the South Carolina Yazoo Company. I am therefore correct in saying that there never was any Federal opposition to the Virginia Yazoo Company of 1789. It is probably true that their inability to raise the money ruined the Virginians.

The article states that Senator James Jackson, "patriot and

statesman, sleeps in an unmarked grave in Arlington across the Potomac." The confiding editor saw nothing to arouse his suspicions in that fact that Jackson was dead more than fifty years when Arlington became a cemetery and that his ashes repose in peace in the Congressional Cemetery on this side of the Potomac. As *The Independent* reports that the author of this article "has been out of the country for most of the time since" it is probable that he left his country for his country's good. Of him it can well be said, in the language of Robert Walne, Jr., "there is a pernicious vanity in some historiographers which excites them to rake up wonderful discoveries both in relation to persons and circumstances by which they expect to distinguish themselves."

Those desiring further information upon this whole Yazoo controversy will find it in the "Yazoo Land Companies" by Dr. Charles H. Haskins, then of the University of Wisconsin, in the Papers of the American Historical Association, Vol. 5, page 395, and in the article on "Georgia and State Rights" by Ulrich B. Phillips, in Vol. 2, page 15, of the American Historical Association for the year 1901.

The writings of James Wilson were collected and published by his son, the Rev. Bird Wilson, in 1804, in three volumes. Perhaps some excuse for this paper may be found in the fact that its author recently bought this original edition of three volumes, in sound sheep, at five cents per volume. A subsequent edition of his writings, by Professor Andrews, was published by Callaghan & Co., in 1895, in two volumes, and a new edition of his works in six volumes is about to be published by Burton Alva Konkle of Swarthmore, near Philadelphia, which will doubtless, when completed, be the authoritative edition of his writings.

Many efforts have been made to redeem Wilson's memory from forgetfulness. Mr. Justice Harlan delivered an address on James Wilson and the Formation of the Constitution before the University of Pennsylvania which was published in the *American Law Review*, Vol. 34, page 481. Sanderson's *Lives of the Signers*, Vol. 6, page 113, contains an elaborate article by Robert Walne, Jr., from which most that has been said of Wilson by various authors has been derived. B. J. Lossing has a similar, but very much briefer, article in the *Signers of the Declaration of Inde-*

pendence. M. C. Klingelsmith has a chapter devoted to him in *Great American Lawyers*, Vol. 1, page 157, and the same author has an article on James Wilson and the So-Called Yazoo Frauds, published in the *University of Pennsylvania Law Review*, 47 (N. S.), page 1. Andrew C. McLaughlin has a valuable article in the *Political Science Quarterly*, Vol. 12, page 1, on James Wilson in the Philadelphia Convention. James Oscar Pierce has an article on James Wilson as a Jurist, in the *American Law Review*, Vol. 38, page 44. D. O. Kellogg published an article on James Wilson and his Times in *Lippincott's Magazine*, Vol. 63, page 245. Frank Gaylord Cook published an interesting article on James Wilson in the *Atlantic Monthly*, in Vol. 64, page 316. Burton Alva Konkle, Secretary of the Wilson Memorial Committee, delivered an able address on James Wilson and the Constitution, before the Law Academy of Philadelphia on November 14, 1906. Lucien Hugh Alexander has published two articles, one entitled James Wilson Nation-BUILDER in the *Green Bag*, Vol. 19, page 1, and one entitled James Wilson, Patriot, and the Wilson Doctrine, in the *North American Review*, Vol. 183, page 971. Edward Lindsey published Wilson *versus* the Wilson Doctrine in Vol. 44 of the *American Law Review*, page 641.

The last article recalls the fact that it has been said that Wilson was a believer in the theory that there was a twilight zone between the Federal and State powers, but it is a reflection upon his intelligence to assume that he did not know that before the end of 1791 Article Ten of the Amendments had been adopted providing "The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people."

These distinguished Americans have sought to recall to the minds of lawyers the great talents of Mr. Justice Wilson and I cannot hope to succeed if they have failed, but can only trust in the language of Macaulay that while "Men eminent in learning, in statesmanship, in war, are not fully appreciated by their contemporaries; . . . posterity does not fail to award them full justice."

On Monday, November 19, 1906, Governor Pennypacker of Pennsylvania and his party left Philadelphia for North Carolina.

On Tuesday, November 20th, at ten o'clock A. M., at Edenton, they joined with the Governor and Chief Justice of North Carolina and others in dedicating a cenotaph to the memory of James Wilson at the graveyard of the Johnston family, where his remains and those of Mr. Justice Iredell had rested for over a century. At one P. M. the same day, the representatives of Pennsylvania started with the remains of Mr. Justice Wilson for Norfolk, Virginia, accompanied by members of the Society of the Cincinnati of North Carolina as a guard of honor. At Norfolk the remains were received by the United States Government on board the gunboat Dubuque which sailed at once for Philadelphia. On Wednesday, November 21st, the Dubuque arrived at Philadelphia with the remains which were received with the highest civic honors and, guarded by United States marines, they were escorted to Independence Hall where he had signed the Declaration of Independence and the Constitution of the United States. There the remains lay in state until the following day, November 22nd, when at one-thirty P. M. the Chief Justice and the Associate Justices of the Supreme Court of the United States, the Attorney General of the United States, and others, met, formed a procession, and followed the remains, under escort of the First Troop of the City of Philadelphia Cavalry, which had rescued him from the mob in 1779, to Christ Church, Philadelphia, where memorial services were held and the interment made. The President of the United States sent a wreath in honor of the occasion. Tributes were announced for this occasion by Governor Pennypacker for the Commonwealth of Pennsylvania, Samuel Dickson for the Bar of Pennsylvania, Dean William Draper Lewis for the University of Pennsylvania, S. Weir Mitchell, M. D., LL. D., for American Literature, Andrew Carnegie, LL. D., for Scotch-American Citizenship, Hon. Alton B. Parker, the President of the American Bar Association, for the American Bar, Senator Philander C. Knox for the Congress, Mr. Justice White, of the Supreme Court of the United States, for the Judiciary, the Hon. William H. Moody, Attorney General of the United States, for the Nation, Hampton L. Carson, Attorney General of Pennsylvania and Historian of the Supreme Court of the United States. The services were conducted by Bishop Mackay-Smith. Thus

after the lapse of one hundred and eight years his body rested in the soil of Pennsylvania, to the fame of which he had contributed so much by the active years of his useful life, there to remain until the morning of the resurrection.

I have infinite admiration for the integrity, the ability, and the attainments of Mr. Justice Wilson and scarcely less do I respect the Commonwealth of Pennsylvania where he spent his life in America and where both my parents were reared. I am reminded, however, that one who loved it not once spoke of Pennsylvania as having produced but two great men in all her history, Benjamin Franklin of Massachusetts, and Albert Gallatin of Switzerland. Without approving the sentiment I respectfully move to amend by inserting the name of Mr. Justice Wilson of Scotland.

Permit me to close by applying to Mr. Justice Wilson the words once used by him in reference to Lord Baltimore :

Indeed the character of this excellent man has been too little known. . . . Similar . . . has been the fate of many other valuable characters in America. They have been too little known. To those around them their modest merits have been too familiar, perhaps too uniform, to attract particular and distinguished attention: by those at a distance, the mild and peaceful voice of their virtue has not been heard. But to their memories justice should be done, as far as it can be done, by a just and grateful country.

THE PRESIDENT: I want to announce the Committee on Resolutions: Senator C. G. Saunders of Council Bluffs, Judge C. W. Mullan of Waterloo, and Wesley Martin of Webster City.

I am sorry to announce that Dean Henry W. Dunn, who was to have read the next paper, "The Law School and its Duty to the State," was unexpectedly called east because of the illness of his wife. A few days ago,—a few hours, almost,—I spoke to Mr. D. D. Murphy, of Elkader, who is a member of the State Board of Education, asking him to say something about the Law School, and he consented to do it, and I feel much gratified because of it, and I now present Mr. D. D. Murphy to you.

THE LAW SCHOOL AND ITS DUTY TO THE STATE

Gentlemen of the Iowa Bar Association: Your President has already made an apology for my appearing before you without

having made that preparation that would naturally be expected, and has relieved me of making such apology myself. I confess I commenced to prepare a paper and partially did so, but did not have time to complete the same before the meeting. It is exceedingly to be regretted that the Dean of the Law School cannot be present, as we would then have a paper commensurate with the dignity and importance of the subject as announced in the programme. I will not make any pretense of substituting for the paper of Dean Dunn, and will content myself with simply calling attention to the more obvious points of contact between the Law School and the State, as I believe that even this will be sufficient to make its duty manifest.

In this presence it will be unnecessary to do more than suggest the important part taken by the members of our profession in helping the State to carry out its purpose. The function of the State is to protect its citizens in their life, liberty, and pursuit of happiness. To do this juridical order must be maintained in the body politic, and those conditions preserved under which the development of the people may be best promoted and their prosperity and progress safe-guarded and advanced. It will, I think, be conceded even by those not of our profession, that there is no class of men who render more valuable service to the State in securing its great end than the lawyers. The administration of justice is almost entirely in their hands. The lawyer serves the State as a Judge on the Bench, and as an advocate instructing and enlightening the Court. While these services bring him before the public eye, to my mind the service that he renders in a quieter manner in his office, advising his clients as to the proper direction of their business affairs, is of equal importance.

The complexity of our present day business affairs has been adverted to on this floor this morning by Mr. Weaver. This complexity has added immeasurably to the importance of the services of the lawyer. There is no business institution, whether managed by corporations or individuals, which is not guided by, and which has not the leadership of, a member of our profession. It is not only in these matters which pertain peculiarly to the private professional side of his work that the lawyer is of peculiar service to the State, for the past and present show that he, more

than any other man, has been and is still called upon to serve his State in a direct and public capacity, as a legislator and as a leader in civic and political affairs. The make-up of our several State legislatures and of Congress, also of our constitutional and political conventions, shows that the lawyer is in evidence, not alone by his numbers, but even more than this by his influence and his leadership; and it is no reflection upon the capacity of the other members, that in any body of people composed in part of lawyers, they are apt to be looked to for leadership and guidance, as it is conceded that, other things being equal, their training and life work fit them in a special manner for such guidance and leadership.

This contemplation on the part that is and must continue to be played by the lawyer in our complex civilization, brings us to a realization of what the character of his training should be. And this in turn will emphatically call to mind the importance of the Law School and its duty to the State; for now and in the future, the lawyers of the State are and will continue to be exclusively trained in the Law School.

In the earlier, and what might be called pioneer days, life in all its phases was much simpler than it is now, and people were able in a large measure to do for themselves everything they found necessary to prepare them for their part in life's work. They could improvise the means for satisfying their needs under the simple conditions of their life. As before stated, during the last fifty years life in every phase has become a very complex thing, and the training for life, and especially for leadership and guidance through the complex mazes of the present day situations, must be commensurate with the duties to be performed. In that early day the lawyers as a rule received their training in the law office of the practitioner and while no preliminary education was required, we find that most of the successful lawyers of that generation were men of good education. Very good lawyers were made in that way, and not infrequently we today hear invidious comparisons made between the excellence of the training then received and of the lawyers developed from that training, and that of those who are now, as they say, ground out, by our law schools.

It is unnecessary for me to take up any of your time showing the good points of these different systems, for at the present time the old system has gone completely out of vogue. No lawyer is trained in the office to-day. Our lawyers receive the greater part, if not the whole, of their professional training in the law school. This has been made compulsory by the change in the methods of conducting a law office during the past twenty-five years. The busy practicing lawyer of to-day would take no time in giving instruction to students, as did the eminent practitioners of the past generation, when every office had its students and men of the class of Judge Shiras and Griffith and Knight of Dubuque (I specially mention these as they lived in my own section of the State but were representative of a class all over the State), vied with each other in friendly rivalry over the question of whose students would make the most brilliant showing when they came before the Committee for admission.

A great advance has been made in the course offered by the Law School during the past thirty years. In all matters of this kind progress must not go faster than the masses of the people can be brought to see its necessity. Every advance involves additional expense, and in a democracy the people must always be taken into the confidence of those who have charge, even of public education, and they cannot do all of those things which they themselves might be very anxious to do, until the people have advanced to the point where they are ready to back them up.

Thirty years ago the State University Law School had a one year course and no preliminary requirements, further than the ability to read and write English, and from my own observation this requirement even was looked upon with a very charitable eye. About that time an additional year was added to the School, and the course considerably extended, but still no preliminary education further than as stated, was required. Sometime after, applicants for admission to the School were required to have finished a three-year high school course, or its equivalent, and this was later raised so as to require a four-year high school course, or its equivalent, and this has remained the requirement up to the present time. About ten years ago a third year was

added to the law course. This brought our school up to the standard of the other law schools similarly situated at that time. Since then, however, we have not kept pace with these other institutions. While they have not extended the length of the law course itself, most schools similarly situated to ours have required a certain amount of collegiate work in addition to the four-year high school course before admitting the student to enter.

It has always seemed to me that the greatest defect in our legal education in the past lay in the failure to require higher standards of admission to the law school, or to the study of law. What I have said as to the services which the lawyer is expected to render points to the very great importance of having a well trained body of lawyers. Unless the lawyer is properly trained he certainly cannot render this service as it should be rendered.

Now I maintain that except in cases of great natural capacity it is impossible for a man to be properly trained in the law school unless he comes to the school with that development that is necessary to enable him to do the work there required in a satisfactory manner. The experience of law school faculties coincides with what we might reasonably feel to be true in this respect. That is, that the ordinary high school graduate lacks that maturity of mind and the other elements of development which are requisite in order that such student may receive from his law course what it is intended to give him. Additional preparation is necessary, and at the present time this preparation is given only by the college. Such preparation brings with it the discipline, the power of expression, the body of useful and interesting information, the outlook upon life, and the breadth of mental capacity and grasp, all of which are necessary to enable the young man to do his professional work as it should be done. It is not alone to enable the young man to do the work better in school that this training should be required, but to lay a foundation for all of his life's work. It is for that reason even more than that he may the better do his law school work, that I would insist upon having this more extended preparation. For if the law student lacks somewhat in his knowledge of law, this can, and may, and even must be made up in his later career.

It is however a rare thing for one, who has not received the broad, liberal training which is at the present time so necessary to the professional man, to render the right service, unless he receives this training before he begins to take up his professional course.

If I had the direction of the education of a young man intending to study law,—a graduate of a high school,—with four years to devote to study, I would require that rather more, than less than one-half of that time be given to general study, and less than half to distinctive law study, than I would the contrary, and by so doing I am satisfied that after the student had been out in the world for ten years he would be a bigger, broader, better lawyer than if he had devoted the whole four years to the study of law and neglected to obtain that liberal training which equips the mind, not alone with those essential things which might be called its mechanics, to-wit: the power of accurate observation, and accurate reasoning from what is observed, but also a knowledge of and ready sympathy with men, a quickness and flexibility of mind, together with a power of accurate and forceful expression, the information, the outlook, the habits of study, the ability to reason things out in orderly fashion; in brief, the power of seeing clearly and seeing the whole situation and being able to place the immediate proposition before the mind in its proper setting in view of the whole system in which it belongs and is a part. This power can only be gained through a more extended discipline and training than is given in the ordinary high school and requires for its attainment a greater maturity of mind than that possessed by the ordinary high school student.

There is no doubt in my mind that the members of this Association have long been of the opinion that a more extended preliminary training should be required before taking up the study of law. This has also been the opinion of the Faculty and of the Board of Education, and I think the fact that it has so long been delayed in this State is due to a feeling that such a step might be regarded as tending somewhat to a spirit of aristocracy by raising standards and making entrance into the profession more difficult. Within the last four years many changes have been made in the University Law School. At the beginning of

that period as I remember it (in giving these figures I am not pretending to be accurate), the year's course contained about 1100 hours of work, whereas the better law schools had somewhere between 1600 and 2000. Much emphasis was also placed on such studies as international law, which I think you will agree with me, is in Iowa more to be regarded as a liberal study than as distinctive law study. The curriculum was changed so as to give about the same number of hours as are given in the better class of law schools similar to our own, and the emphasis placed rather upon those studies which are fundamental to all legal knowledge. This required more intense work on the part of students and it became manifest to the Faculty that the ordinary high school student was not fully equipped to do this work properly.

After a careful study of our situation and of the conditions in other States similar to our own, the Faculty of the Law School and the Board of Education were abidingly persuaded that it would be a mistake to defer longer the demand for this additional preliminary education, and it has therefore been announced that after September 1st, 1914, one year of college work will be added to the present requirements for admission to the Law School, and commencing with the year 1915 two years of college work will be added. We will then be on a par with the best schools in the West, so far as admission requirements are concerned, and there is no reason why we should be lagging behind. This will undoubtedly cause a decrease in the number of students. I have, however, heard no complaint of a scarcity of lawyers in Iowa. It seems that quality and not numbers is what is to be desired.

It may be objected to this move that it deprives a brainy young man who may not have had the opportunity to get this college training, and who is of an age when it would be a hardship to require him to get that training before taking his law work, of his equal chance; and in order not to deprive such, a provision is made by which an applicant over twenty-one years of age may be admitted by permission of the Faculty and will be first classified as a special student. If after entering, such student shows himself capable of doing the work satisfactorily, he

may be recognized as a candidate for a degree. Thus the doors of opportunity are not closed to any worthy young man of ability and energy who may not have had the opportunity to get the preliminary training in college, but who has by his own efforts gained for himself the training and mental discipline and other things which are the usual results of such training, and who is of that age when it might be a sacrifice to ask him to spend the extra time. It is not asking too much of the young man under twenty-one to do this work in college. With the opportunities now afforded any young man having the proper mental attitude, the energy, and the right ideals of the profession, will be able to do this work and will find the avenues of opportunity open whether he has means or not. Our observation at the universities and colleges of the country shows that poverty is no handicap in this respect.

A full three years will be required in the law college hereafter in order to entitle the student to a degree; and credit will not be given for time spent in the office. Any one, however, who is capable of doing the work may be admitted as a special student and get credit for work done. The Faculty and the Board of Education felt that they would be derelict in their duty if these matters were longer delayed. They also felt that the important place held by the lawyer in aiding the State in the performance of its corporate functions demanded a class of men in the profession for the training of which this preliminary education would be necessary, and the law school is to-day the sole fountain of training for prospective members of the profession.

A closer relation between the Bar of the State and the Law School would be a good thing for both. This relation, of course, can never become as close as that existing between the College of Medicine and the medical profession, because law as practised cannot be as fully taught in the school as medicine. There are many things about the practice and the application of legal principles to the everyday questions that must of necessity be learned outside of the law school. There are however numerous points of contact, and I have often thought that it would be well for both if the two were brought into somewhat closer touch. The existing aloofness has come about largely by reason of the

growth of a distinct profession known as law teachers. Formerly teachers were practitioners and judges, and the air of the court and law office was brought into the school. This is no longer the case, and it seems to me that the pendulum has swung too far in the other direction, and that there would be a distinct gain if somewhat of the old order were restored; not however by having the greater part of the school work done by men in actual contact with the administration of justice, but by having some integral part of this work done by men of known ability and leadership in the profession. It seems to me that this would have a tendency to keep the courses properly balanced and prevent the going too far to the study of law solely on its scientific side abstracted from the practical side, and would also prevent the faculty from becoming too doctrinaire. It would also be a stimulus to the student body and arouse interest and enthusiasm by giving points of contact and relating the school work more closely with the work of the profession, thus making it more human.

It has always seemed to me that professional and technical schools should relate their work to the after life work as closely as its nature will permit. I may state here that this matter is being considered by the Board and Faculty and attempts will be made to have lines of work introduced for the purpose of supplying the omission I have here noted. I will say in conclusion that the Board of Education will be very glad to have constructive criticism from the members of this Association and from the Bar Association as a body at any time. I will make the admission, humiliating though it may be, that we don't really think we know it all, and will, as I said, be very thankful for suggestions and criticisms that may be of aid to us in our work. We think there ought to be a closer relationship between the Bar of the State and the Law School and we would like to have the Bar Association do its part to bring about such relation.

Gentlemen, I thank you very much.

THE PRESIDENT: I wish to call special attention to the fact that the Annual Address will be delivered at 2 o'clock this afternoon. Judge Emory Speer is here, and I am sure you will all be delighted to hear him.

Some of the members are here with their wives. I am directed to announce that automobiles will be at their service this afternoon in front of the hotel. I am also authorized to say that the management will make no objection if these galleries are occupied by the ladies to-night.

At this time, 12 M., an adjournment was taken until 2 o'clock P. M.

THURSDAY AFTERNOON SESSION 2 O'CLOCK P. M.

THE PRESIDENT: The meeting will be in order.

I am requested to announce that immediately after the close of the Annual Address, this afternoon, we will be taken in hand by the local Sioux City Bar. Trolley cars will be in waiting at the corner of the hotel, to take those who care, to Riverside Park. Those who do not wish to go the water route, can go to the ball game.

The Secretary will now call the roll of Districts for the members of the Executive and Nominating Committees. The committees were announced as follows:

NOMINATING COMMITTEE

- 1st District, J. O. Boyd, Keokuk
- 2nd District, W. R. Hoffman, Muscatine
- 3rd District, C. W. Mullan, Waterloo
- 4th District, C. B. Hughes, West Union
- 5th District, C. H. Van Law, Marshalltown
- 6th District, D. T. Stockman, Sigourney
- 7th District, J. L. Parrish, Des Moines
- 8th District, T. L. Maxwell, Creston
- 9th District, W. C. Ratcliff, Red Oak
- 10th District, Carl F. Kuehnle, Denison
- 11th District, David Mould, Sioux City

EXECUTIVE COMMITTEE

- 1st District, H. J. Wilson, Burlington

- 2nd District, C. M. Dutcher, Iowa City
- 3rd District, T. J. McGreevy, Ackley
- 4th District, Chas. Pergler, Cresco
- 5th District, C. J. Cash, Anamosa
- 6th District, W. O. McElroy, Newton
- 7th District, J. M. Parsons, Des Moines
- 8th District, V. R. McGinnis, Leon
- 9th District, C. G. Saunders, Council Bluffs
- 10th District, E. G. Albert, Jefferson
- 11th District, W. A. Helsell, Odebolt

THE PRESIDENT: Gentlemen of the Convention: Every Iowa man who has ever attended a meeting of the American Bar Association has enjoyed meeting the gentleman who is to deliver the Annual Address this afternoon. I take great pleasure in introducing to you Judge Emory Speer, of the Federal Court of Georgia.

AMERICANISM AND AMERICAN JUDGES

These are evil days for a coördinate power of our government. It is the Judiciary on which so much depends. In truth, it seems that the symmetrical design carved by the Fathers of the Nation is in danger of mutilation and possibly of complete destruction. This foreboding may not be fully justified, but men of robust and patriotic Americanism should lose no occasion to invite the attention of the people to the theme. Not patriotic is he, nor indeed is he wise who may discern the baleful portents to the future of our Judiciary looking above the horizon, and then fail to disclose or seek to minify the ruin now threatened to the fairest and most effective government for free men the world has ever known. The ruin of the National Judiciary is the downfall of free government.

How came our government? When Mr. Gladstone declared it to be the greatest work ever struck out in a given period by the brain and purpose of man, the eulogium was not unmerited, but it was wholly inaccurate. The Constitution of the United States was not "struck out in a given period." It is a perfect growth, but of long, slow, and unintermitting development. The

germinal principles were quickened on that bleak heather-crowned peninsula, jutting into the purple waters of the North Sea, where was the primal home of the Anglo-Saxon, the liberty loving race from whom we spring. The steady fructification is seen in the laws of Edward the Confessor. It expands in the brief and bad Latin of Magna Charta, on Runnymede, wrung by Church, Lords, and Commons from that king of whom Stephen Langdon, the Primate of England, exclaimed, "Foul as it is, hell itself is defiled by the presence of John." It was fertilized by the Petition of Right in the time of the First Charles, declared by Macaulay to be the second great charter of the liberties of England. By it the royal traitor bound himself never again to raise money without the consent of the houses, never again to imprison any person except in due course of law, and never again to subject his people to the jurisdiction of courts martial. It was revived and restored by the Bill of Rights, presented to William and Mary by that famous young lawyer, John Somers, who spoke for the estates of the realm. In the Constitution of our nation its mighty stem is like the Banyan of India, and the Constitutions of every State like the tendrils of that forest marvel strike down, take root, multiply, and replenish the expansive frondage, until a hundred millions of free men are sheltered by its refreshing shade.

True, in a given time, in 1787, the Constitution was considered and framed. It may well be doubted if in the annals of time there can be found a deliberative body of approximate size which approached, or of any size, which surpassed, the Philadelphia Convention which framed it. The body was indeed unrivalled in the originality and native power of its membership, in their practical familiarity with all the struggles men had made for the protection of personal and property rights. It was most notable for the presence of many leaders of men, whose supreme powers had been trained by long military service and the gigantic energies put forth in that most terrible, yet most fascinating of all games, the game of war. The English Revolution of 1688 and John Somers' Bill of Rights little ante-dated many of these men.

There was Benjamin Franklin, sagacious as Nestor, "wise," it was said, "as the immortal gods." Born in 1720, he was nearer

the Petition of Right than some here to our great war about our Union. There, too, came "the Silent Watchman," the patriot and sage, the tall and sinewy Virginia planter, the orator who in the Virginia House of Burgesses made the shortest and most eloquent speech in our language—"I will muster one thousand men, arm and equip them at my own expense, and march them to the relief of Boston." His was the stately figure who had drawn his sword, wheeled his Virginia thoroughbred, and under the giant elm at Cambridge had taken command of the Continental Army. He was but twelve years younger than Franklin. He it was who at Yorktown, when his bush fighters swarmed over the redoubt and dragged down the meteor flag of England, closed his field glasses and quietly said, "The work is done and well done."

When the Father of his Country had come to die there arose in Congress another Virginian. He was the son of Washington's boyhood sweetheart, his lowland beauty Lucy Grimes, and the father of our Southern hero, Robert Edward Lee. He had the manly beauty of his historic American family. He came to pronounce the perfect tribute—"First in war, first in peace, first in the hearts of his countrymen." Such were the men who framed our organic law or advocated its adoption and provided for the independence of that judiciary whom pigmies perched on Alps have now marked for impotency and destruction.

In the later history of our country there was another very great man. He went to England and was there seen by perhaps the greatest writer and thinker of the last century. Wrote Carlyle to an American friend—"Not many days ago I saw at breakfast the notablist of all your notabilities, Daniel Webster. He is a magnificent specimen. You might say to all the world, 'This is our yankee Englishman; such limbs we make in Yankee-land!' As a logic fencer, advocate, or parliamentary Hercules, one would incline to back him at first sight, the morpious crag like face; the dull black eyes under the precipice of brows; like dull anthracite furnaces needing only to be blown; the mastiff mouth accurately closed. I have not traced so much of *silent Berserkir rage* that I remember of in any other man." Oh, the joy it is, to turn from the atrabilious pigmy, be he perched never so high, and listen to the melodious thunders of a Webster.

"Justice, sir," said Webster, "is the greatest *interest* of man on earth. It is the ligament which holds civilized beings, and civilized nations together. Wherever her temple stands and so long as it is duly honored, there is a foundation for *social security*, general happiness, and the improvement and progress of our race, and whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name and fame, and character, with that which is and must be as durable as the frame of human society." Gentlemen, the judiciary are the priests of that temple, but of all the judges of earth's nations, those of our country have the loftiest vocation, the most significant, the most awful responsibility.

The responsibility of the American Courts to pronounce an act of legislation violative of the Constitution, prompted De Tocqueville to declare that "a more imposing judiciary was never constituted by any people." The Supreme Court is placed at the head of all known tribunals, both by the nature of its rights and the classes of justiciable parties which it controls. While this is true, since its jurisdiction, save in controversies between States and suits by and against foreign ambassadors, ministers, and consuls, is wholly appellate, since all litigation must originate in the trial courts, the significance of this judicial power extends even to the least conspicuous State Court entrusted therewith. This power from the beginning has excited with some the utmost jealousy, and, "to the jealous trifles light as air are confirmation strong as proofs of holy writ." And yet, it is demonstrable that this power has saved the country from calamity beyond the scope of human description.

Has it ever occurred to you, my brethren, to contrast the consequences of other efforts in other lands to dismember territory and destroy government with those which followed the downfall of the Confederacy?

Sixty-six years before the war between the States the gallant Poles attempted to throw off the Russian yoke. The combined Russian and Prussian armies moved on Warsaw. After resistance the most glorious the city fell. Ten thousand Polish sol-

diers were slain and above twelve thousand citizens of every age and sex were put to the sword. In the familiar lines of Campbell—

Hope for a season bade the world farewell
And freedom shrieked when Kosciusko fell.

Have you forgotten the reign of terror in France, the massacres of La Vendée and Lyons, the execution by the guillotine of the son of Saint Louis and the daughter of Maria Teresa? Do you recall that Marat declared that two hundred and sixty thousand heads must fall before freedom was secure, that the revolutionary committees discovered that seven hundred thousand persons should perish? Do you recall how the mob hurled itself upon the Cathedrals of Paris? How they ransacked the tomb of Henry of Navarre, who, at Ivry, had exclaimed to the chivalry of France—

Press where you see my white plume wave, amid the ranks of war,
And be your Oriflamme today, the helmet of Navarre.

How they scattered the skeleton of Francis the First, who at Pavia, though in defeat had exclaimed, "All is lost, save honor." That even the glories of Turenne could not protect his grave from spoliation, that French hands profaned the coffin of Du Guesclin, whose heroism in days of yore had rolled back the tide of English invasion. Do you not know that such cruelties and excesses of the victors were not confined to foreign lands or other races? On the restoration of Charles the Second his servile courtiers dragged from the grave, hung, quartered, and burned the remains of Cromwell, whom Macaulay declares was the greatest prince that ever ruled England. Do you not recall the Bloody Assizes after the combat at Sedgemoor, when under the presiding rule of the infamous Jeffreys, the most indelible stain in all the bloody history of the race was fastened on the courts of England? In one city two hundred and ninety-two persons received sentences of death. In the entire circuit the unfortunate victims whom Jeffreys hanged were three hundred and twenty. "At every spot where two roads met," writes the historian, "at every market place, on the green of every large village which had furnished Monmouth with soldiers, ironed corpses, clattering

in the wind, with heads and quarters stuck on poles, poisoned the air and made the travelers sick with horror. In many parishes the peasantry could not assemble in the house of God without seeing the ghastly face of a neighbor grinning at them over the porch."

In 1864, while our struggle was on, the people of Poland again arose against their Russian conquerors. They showed the most splendid heroism, but were overcome by the massy armies of Russia. Then followed the butchery of the vanquished. The Polish leaders were mercilessly hanged. The few who survive toil as convicts in Siberian mines. Well might the Russian commander telegraph his master, "Order reigns in Warsaw." Order! aye, and silence. But it was the order, the silence of death.

Now, look on another scene, it was in the ensuing year. On the 9th of April, 1865, the incomparable remnant of Lee, surrounded by ten times their number, grounded their arms, and furled the conquered banner at Appomattox. "Brethren of ours now are these men," exclaimed the Union commander, and not a salvo of rejoicing was fired, not an unkind word was heard from the brave foemen whom they had so often defeated, so long held at bay, and the soldiers and officers of Grant made haste to open their haversacks and uncork their canteens to revive and sustain the starving heroes of Lee. It was said at the time by some one to President Lincoln, "Do not allow Jeff Davis to escape the law, he must be hanged." "Judge not, that ye be not judged," came the instant reply from that great American heart.

What explanation is there of that absence of cruelty towards the victims which marked the termination of the mightiest and bloodiest civil war the world had ever known? In that struggle there were one thousand unnamed skirmishes of greater magnitude, of greater destruction of life, than in the battle of Sedgemoor which in England led to the Bloody Assizes.

No other struggle excelled ours in fierceness, nor equalled it in the percentage of loss. The ablest military writers concede that America still holds the world's record for hard fighting. At the famous battle of Blenheim, the victors commanded by Marlbor-

ough and Eugene lost nineteen per cent. and the total percentage was twenty-six per cent. At Austerlitz the total percentage was sixteen per cent. and the victors thirteen per cent. At Waterloo the total loss was twenty-four per cent. and the victors twenty per cent. Now look at American fighting—at Gettysburg, the losses of the Union Army were twenty-three per cent. and the losses of the Confederates thirty-two per cent. And, said Lieutenant-Colonel G. F. Henderson, in his great work on Stonewall Jackson, "since Eylau in 1807, there has been no great battle in which the losses of the victors equalled the twenty-seven per cent. of the Confederates in their victory at Chickamauga."

Waterloo in deadly fighting was eclipsed by Gettysburg; Gettysburg by Sharpsburg; Sharpsburg by Chickamauga. Besides, in our great American struggle, desperate as was the fighting, there was rarely the spectacle of a routed army. At Chickamauga, the brave soldiers of the Union lost thirty per cent., but even then, one corps, that of General Thomas, held fast to prevent pursuit, and the next day and until that victorious march out at Missionary Ridge the whole army held their lines in Chattanooga. At Sharpsburg, the Confederates, though defeated, held fast to their position all the next day. At Gettysburg the Confederates held their ground nearly all the following day, and a majority of them did not know they had been defeated until the war was over. Even now I sometimes meet an aged veteran of Lee who yet regards that famous day a victory for the Red Cross Flag.

In view of these facts and figures, the story of the "human bullets" by Japanese writers may not, after all, be so appalling. Fourteen and one-tenth per cent. was the extreme loss sustained by the human bullets at Mukden, and eighteen and five-tenths per cent. at Lio Yang. And as a Southern man and one who wore the gray let me say, if finally the day shall come when the fearless soldiery of Nippon shall land, when the sons of the men of Grant and Sherman shall be hard pressed and smothered by their fire, or fainting and faltering under their desperate assaults, then again will be heard the rebel yell, and the sons of the men of Johnson and Lee, oh! how they will spring to the firing line, how their deadly aim will smite our country's foes, and in

the heroism of all her reunited sons, magnanimous America will find her reward.

These terrific losses must be held to represent not only the conviction of duty, but the desperate valor of men from American States called Northern, and American States called Southern, in what a Southern writer has aptly termed the Brothers' War.

Why then was it, when the struggle was over, when the fiery tide of revolution had engulfed our land, bearing on its destructive wave countless thousands of priceless lives and countless millions of property, the bitterness between the fighters instantly disappeared and not only was there no retributive action on the part of the victors, but in the period of a breath in the life of a Nation, every right of citizenship was restored, and the men who had led the forces of the vanquished, who in other lands would have expiated their action on the scaffold or in exile, were in the briefest period holding the highest stations, and entrusted with the gravest responsibilities under the government they had attempted to destroy. I maintain that it was the spirit of American constitutional justice established and taught from the beginning by American lawyers and American Courts. It lived and moved and had its being in the hearts of the people. It perfected what the armies *ex necessitate* had left incomplete. It fixed American institutions upon foundations broad and stable as our physical empire itself. It vitalized American character with principles, just, generous, benignant, indeed affectionate, as the blood with which pulsate the great hearts of a noble people. In the ennobling work, the Federal Judges of that day took full part. Bitter indeed was their arraignment by certain politicians, North and South, whose evidence of the firing line was strictly "hearsay," but even this garrison of the bomb proofs soon put behind them their belated ferocity.

And now, that the lapse of time has cooled the fierce spirit in which the first post-bellum legislation was enacted, all men of all parties know that the Courts were right then, and are eternally right. It but epitomized the latest address to his countrymen which fell from the lips of the martyr Lincoln. This was the 11th of April, 1865. For three days longer was that mighty

heart to throb with love for his fellowmen. What did he say? Oh, words immortal! They should be inscribed in letters of gold on the walls of that mighty memorial to the martyr to be builded and consecrated by a Nation's love. "We all agree," said he, "that the seceded States, so called, are out of their proper practical relations with the Union, and that the sole object of the Government, civil and military, in regard to these States is to again give them proper practical relations. Finding themselves safely at home, it would be utterly immaterial whether they had been abroad." What then said the Court? It was in *Texas vs. White*. The opinion was pronounced by the Chief Justice. He had been a member of Mr. Lincoln's cabinet. He had left it in anger. But the benignant purpose and exquisite judgment of the President had made him Chief Justice. "The Constitution in all its provisions looks to an indestructible union composed of indestructible States." Lincoln was dead, but it seemed that the genius of America had breathed upon the ashes of the martyr slain and that the soul of Lincoln had met the Justices in the consultation room to deliberate, counsel, and decide. Thus the court saved us. Other mighty rulings followed and applied the principle, healing, cementing, making restoration perfect.

These cases branded the condemnation of the Constitution upon measure after measure, in decisions vital to the peace and happiness of the homogeneous American people. It enabled us who in all sincerity and for love of home and fireside followed the red cross flag of the Confederacy, and upheld for four desperate years the sinking fortunes of a hopeless cause, to rebuild our homes, to reconsecrate our altars, to re-kindle the torch of education, to add the superabounding products of our practically untouched resources of field, forest, and mine, to the aggregate wealth of the Nation, and so endear again to the people, our common country, that in its latest need the veterans of Lee and Johnston, and the sons of their blood, flocked to the colors with a spontaneity and enthusiasm unsurpassed by the veterans of the Union, or by the gallant youth of the North.

But the demands of the National Courts for the support, aye, and the gratitude of the people not alone of the South but of the whole country are beyond the descriptive measure of human

speech. The supremacy of the Government in every proper case, where its power is challenged, its right to establish banks for the commerce of the people; its power to control the commerce with foreign nations, and between the States upon principles of justice; to restrain combinations in restraint of trade; to establish uniform rules of naturalization, and uniform laws on the subject of bankruptcy; to restrain unconstitutional powers attempted by the States; to condemn the valueless State currency at times emitted; to uphold the obligations of contracts; to promote internal improvements; and to provide for the common defense—these are but a few of the vital questions which are imperishably imbedded in our system by the constructive genius, the massive minds, the immovable firmness, and the abounding patriotism of the great Judges by whom they were heard and determined.

It is most unhappily true for the peaceful and satisfactory administration of National Jurisprudence that in the early history of our Government, there arose the bitterest feud between two of America's greatest sons. It is impossible to overestimate the conflicts in the forum and possibly also in the field which can be traced to the personal animosities of Thomas Jefferson, who drafted the Declaration of Independence, and of John Marshall, who found the Constitution of the United States a skeleton and clothed it with power, beauty, and, patriots may trust, with life immortal.

And yet Jefferson and Marshall were kinsmen. It is not generally known that to the kinship may be added the immortal name of Robert Edward Lee. Marshall's mother, Mary Keith, Jefferson's mother, Jane Randolph, and Lee's grandmother, Mary Bland, were all three granddaughters of Colonel William Randolph, the first of that great name in this country. Indeed, Jefferson narrowly escaped a closer kinship with Marshall. Marshall's wife, the lovely Mary Willis Ambler, was a daughter of Jaqueline Ambler, the Treasurer of Virginia. Her mother was "Judy" Burwell, and this same "Judy" at one time inspired a temperate passion in that breast whose patriotic fires in later days prompted the Declaration of Independence. In the euphuistic fashion of that day, which made every sentimental youth refer to his lady love with romantic appellation, Jefferson

called his Judy "Belinda." Why "Belinda" I do not know. The adolescent statesman told his "Belinda" that he loved her but did not desire at present to engage himself, since he wished to go to Europe for an indefinite period, but he guardedly said that if on his return he found his affections had undergone no change, he would finally and openly commit himself. This early declaration of independence did not appeal to Belinda, and she promptly gave walking papers to the laggard in love. A little more affection on the part of the future sage of Monticello, and Jefferson might have been the father-in-law of Marshall. Their historical differences would doubtless have been terminated by conjugal decrees, for then as now, as it ever ought to be, the hand that rocks the cradle is the hand that rules the world.

As it turned out Jefferson hated Marshall. John Adams appointed Marshall Chief Justice in open defiance of Jefferson. In a letter to Gallatin Jefferson speaks of the "gloomy malignity of Marshall's mind." He refers to Marshall's life of Washington as the "five volume libel." Mr. Jefferson's real cause of complaint against Marshall was that he enforced powers not expressly delegated by the letter of the Constitution. Mr. Jefferson had written the Kentucky Resolutions in which he made that State declare that it would tamely submit to undelegated and consequently unlimited powers in no man or body of men on earth, and yet no American ever lived who made more signal use of an unexpressed power, than did Mr. Jefferson himself. This was in the Louisiana Purchase. Of this on August 12, 1802, he wrote to Breckenridge, "The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union." Then Mr. Jefferson quickly pocketed his constitutional scruples, his followers trampled upon them with equal alacrity, and they made the purchase. Thus it was that the United States, instead of remaining a feeble fringe along the Atlantic Coast, with hostile nations to the west, north, and south, was able to follow the Star of Empire as it westward took its way, and became the great world power which in this day at once excites the envy and challenges the admiration of mankind. Why, this "unauthorized" action of Mr. Jefferson gave to the Union incomparable *Iowa* itself. Need I say more?

On the other hand, the power which Jefferson exerted when he bought from Napoleon the Western Empire, was avowed by Marshall to be lawful and its exercise valid. His views were expressed in the great case of *McCullough vs. Maryland*. This involved the constitutionality of a National Bank and the State's power to tax it. But for the ruling of the Court not a National Bank could exist in the broad reach of this land of the free. Said the great Chief Justice—"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and the spirit of the constitution are constitutional."

That Marshall was right and eternally right is not longer in the realm of debate. If we must stick to the letter of the Constitution, we must sweep from the statute books the entire criminal jurisdiction of the United States Courts. If there are no implied powers, the fame of our jurisprudence would wither and perish like the prophet's gourd. The public buildings which house our officials and protect our records, the forts and batteries on our boundaries, the friendly lights which guide the mariner, the granitic walls of the great locks on the Great Lakes through whose portals float annually in safety a tonnage greater and more valuable than that which rides over the waves of the ocean, the stupendous works at the mouth of the Mississippi, the incessant clanking of those gigantic machines now cutting an inter-oceanic canal for the maritime commerce of the world, these, and much more like these would but be the monuments of an usurping government, a lawless, and therefore a decadent people.

What letter is there in the Constitution which justified Theodore Roosevelt to rush the Army and Navy of the United States for the salvation of earthquake-shattered and fire-swept San Francisco? What line or letter to justify Woodrow Wilson to despatch the surgeons of the army, the stores of the War Department, the boats of the life savers, for the salvation of Omaha, of Dayton, and other cities, swept by the cyclone and submerged by the flood? And yet, who is there to challenge this power?

When Cushing, one of Marshall's associates on the bench, died, Jefferson wrote in great glee to Albert Gallatin:

I observe old Cushing is dead. The event is a fortunate one, and so timed as to be a God's send to me. At length we have a chance of getting a Republican majority in the Supreme judiciary.

A Republican then is a Democrat now.

It resulted, however, as Mr. Jefferson doubtless thought, in swapping the devil for a witch. The illustrious Joseph Story was appointed. He soon came to idolize Marshall, and in 1822, this great Associate Justice wrote—"Mr. Jefferson stands at the head of the enemies of the judiciary, and I doubt not will leave behind him a numerous progeny bred in the same school." I sometimes fear that the prophecy was true.

It was a method of a very wise man, whom Mr. Jefferson well knew, to advance the truth by the Socratic method,—this was by asking questions. He was Benjamin Franklin. Let me, with prudent reserve, and afar off, imitate the perfect judgment of that man, who at once stole the fire from heaven, and from the angry breasts of his countrymen.

Does not a measure of recent legislation make it possible that the power of the United States Courts can be for an indefinite period actually paralyzed? Is it not likely that this measure will be generally utilized with Judges of the greatest effectiveness and by law breakers of the most atrocious character? Consider the crime of a Guiteau or a Csolgoz. Let the accused be represented by reckless or desperate counsel. A president, gentle and noble as McKinley, or learned, fervid, and eloquent as Garfield, or a foe to graft, fascinating, inspiring, dominating as Roosevelt, has perished by the hand of an assassin. The world stands aghast at the crime. The assassin awaits the trial. Every preliminary has been arranged. Then ten days before the trial, section twenty-one of the new judicial code is invoked. What is this?

Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the Judge before whom the action or proceeding is to be tried or heard, has a personal bias or prejudice, either against him or in favor of any opposite party to the suit, such Judge shall proceed no further therein.

It matters not how frivolous the alleged cause of personal prejudice. The statute is imperative. With all the injurious consequences of delay, of public excitement, and the furious

outbreak which may result from frenzied passion of an outraged people, no matter how perjured the oath, how paltry the pretext, how great and causeless the delay, the Judge must descend from the bench, another Judge must be designated. The illustration is, perhaps, extreme, but the innovation is applicable to any case, to all cases, and I believe that no other single measure of legislation can do so much to cripple the effectiveness, the usefulness, and the authority of our National Courts. The letter of the statute accords no hearing to the Judge or to a party. Is this due process of law? Test it by the definition of Daniel Webster—

By the law of the land is more clearly intended the general law, a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.

But more dangerous than the power to disqualify a Judge is the uncontrolled power to disgrace and defame him. My brethren, I ask you to consider if, in the utter absence of all charges against him, the recently adopted method of arbitrary and secret espionage or investigation of Judges, made by Examiners, as they are termed, of the Department of Justice, under the direct order of the Attorney General, is not to maltreat American Judges with cruel and apparently callous indifference to their reputation and good name? I speak impersonally and with all due deference and respect for the head of a Department who is *ex officio* the leader of the American Bar. He is, however, also the leading counsel for the Government, and no matter how considerate, how equable in thought and language, how completely non partisan he may be, ought any lawyer to have inquisitorial power over the Judge who is to try his cases? And, least of all, should this power be exercised in a land where the independence of the judiciary is the very foundation stone of the national structure? Is it not indeed intolerable that the lawyer who is the leading counsel for the Government shall have within his power and control, the right to question the honor and character, official and personal, of the Judges upon whom determinations of all national jurisdiction must depend? True, the Attorney General can act at any time and make any accusation he thinks proper, as can any citizen, but can he constitutionally exert the powers, detail

the officials, utilize the machinery, and expend the money of the Government in inquisitorial examinations of a Judge appointed by the President, confirmed by the Senate, and who holds his office during good behavior? Where is the constitutional right or statutory authority for this amazing innovation? Does this not commit to a lawyer on one side of a multitude of cases the right to investigate the title to his office of the Trial or Appellate Judge, and if this could ever be properly done, should it ever be done without notice to the Judge and information to him of the complaints against him? Would even the President with all his initiative and power attempt this, and if the Attorney General has no such lawful power can his Examiner lawfully appear at the Court, and officially enter upon the inquisition of a Judge? And, finally, if there could ever be a shred of propriety in such action, should it ever be done when the Court is in actual session, when, more than at any time, the Judge should be undisturbed in those absorbing, intense, and exacting intellectual efforts on which the rights of property and of liberty must depend?

Who is the Examiner of the Department of Justice? I have looked in vain through the statutes to find the definition of his duties. This critic and censor of Judges need not be a practitioner or even a lawyer. For many years, however, I have observed that they were restricted to examination and report on the Marshal, Clerk, and other disbursing officers, most of whom are directly appointed by the Department of Justice and who, of course, should be responsive thereto.* Now, however, they exercise functions infinitely graver, infinitely more dangerous to the three-fold distribution of power under the American system. The Court may be in session, the calendars may be thronged with assignments, the jurors and grand jurors in attendance, the members of the bar gathered. The Examiner appears on the scene. It is, somehow, at once given out in the newspapers that he is to investigate the Judge. He appears in court. He casts a critical eye upon the proceedings, and sometimes takes notes, with an air not wholly unmeaning. He interviews disgruntled attorneys. Sometimes when a ruling is made, he hastens to the attorney

*The latest act appropriating money to pay these officials limits their work to Marshals, Clerks, and the Referees in Bankruptcy.—[E. S.]

losing and suggests error and even grave injustice. He takes statements of stubborn debtors whom the judgments and decrees of the Court have obliged, most unwillingly, to pay their debts. All the *quid nuncs* of the community are on the alert. The Examiner, and of him I speak with timid deprecation, "works in a mysterious way his wonders to perform."

All the while, be it remembered, there is not a syllable of imputable censure or criticism pending against the Judge where alone charges should be made, and that is, in the appropriate offices of the representatives of the people, to whom is committed as well the rights of their constituents to an upright and honest judiciary, and the honor and character of Judges who are presumed to have done their duty.

In the meantime, the Examiner imparts to the Judge no information whatever of any complaint. There is then no chance for defense, even if defense to an unauthorized inquisition by an unauthorized inquisitor, was not unworthy of the judicial station. Who then can forecast the report the Examiner will make? When it will be made is equally uncertain. Finally, the Attorney General himself informs the public in the most public way, that against the Judge no charges have been preferred, but, alas, the harm, causeless, cruel, irremediable harm is done. This method is very, very recent. I dare declare that no other could be more offensive to the chastity of judicial honor, no other more harmful to judicial vigor, and with experience of four years in the service of my State, and thirty-four years in the service of my country, I declare that no other proceeding can be more destructive of the confidence and support accorded the judiciary by the masses of the people. If proper with a District Judge, it is equally proper with Judges of the Circuit Court of Appeals, and the Supreme Court of the United States. It is indeed to place the Judge at the mercy, not only of the Chief, but of the subordinate of an Executive Department. It is a continental and not an American method. Aye, it is more Russian than American. Then, too, there is no end to it. The investigations of the Judge may and do follow for each successive year. Does it not trench upon a supreme privilege of the representatives of the people? Is it not violative of very valuable principle of our Constitution to secure

the independence of the coördinate branches of our Government? Surely this method has grown up through the action of subordinates, and the non-observance, rather than the orders of the lawyers who fill the station of Attorney General. Will the Attorney General longer permit such continuous torture to the judges of our country? Do we dread constitutional investigation? No—

*Falsus honor juvat
Et infamia mendax terret
Quem sed mendosum et mendacem.*

But to endure such an ordeal as that I have but feebly portrayed, without suffering the most intolerable, the Judge must have the hardihood of a head-hunting Igorrote or a Patagonian savage. And shall this un-American method continue? By it and similar aggressions upon the independence of the judiciary, shall the august fabric which Marshall and the great Judges who held with him have builded, amid the cursings of the mob, the jeers of the hoodlum, and the mouthings of the demagogue crumble into nothingness? The independence of the Judges is the chief felicity of the Constitution. Will they now be asked to crook the pregnant hinges of the knee that thrift may follow fawning? No greater curse can be inflicted upon the Nation, said John Marshall, than a cringing and dependent judiciary. If the magistrates to whom the judicial power of the Nation is entrusted shall be dragged down from the serene reserve they now maintain, if they must be subservient to the politicians who hold departmental offices, then truly the noble motto, "Let Justice be done, though the heavens fall," will be supplanted by the odious slogan, "To the victors belong the spoils," and the high judicial station, once the glory of the Nation, will become the ignoble meed of party strife and party victory.

Forget not, my brethren, that the dignity of our noble profession depends upon the undefiled purity and the righteous authority of the courts wherein you are the Priests of Justice. Your Courts degraded and enthralled, your Judges prejudged, uncertain, timorous, trembling before partisans in office, and

before that "many headed monster the mob,"* wherein lies your safety, your repose of mind, the glory and honor of our noble profession, and the security of liberty itself? First to feel the change, you will be the most constant sufferers and the last to suffer. Is it not then your solemn duty to stand by the system the Fathers framed? Stimulate, if you please, your law reformers to merit the pride and rival the achievements of Napoleon, who, in his darkest hour, despite the memories of Lodi, Marengo, and Austerlitz, exclaimed—"I shall go down to posterity with the Code in my hand." Let this be your ambition and the purpose of the great, sane, judicious, patriotic masses of our countrymen, and in the prophetic words of a great American lawyer—"Judges will be appointed and will pass away. One generation rapidly succeeds another, but whoever comes and whoever goes, the Courts remain, strong in their traditions, consecrated by their memories, fortified by the steadfast support of the profession around them, anchored in the abiding trust of their countrymen, they will go on and still go on, keeping alive through many a century that we shall not see the light that burns with constant radiance upon the high altar of American Constitutional Justice."

MR. ROBERT HEALY: Mr. President, and Gentlemen of the Bar Association: Judge Speer is no stranger to the bar or to the judiciary of Iowa. He is not a stranger to the literature of the jurisprudence of our commonwealth, or of our country. We know him by the opinions that he has written and that have become a part of the judicial history of our country. His opinions breathe the spirit of humanity and of civilization.

Therefore, in behalf of the Bar Association of the State of Iowa, I move you, that by a rising vote we extend to the distinguished Jurist of the Southland our hearty gratitude and

*An unscrupulous partisan has attempted to mislead the thoughtless to believe this quotation was intended to refer to the people. The metaphor is Lamartine's and the great Frenchman had in mind the frenzied sans culottes who in the Reign of Terror sang *Ca Ira* and danced the Carmagnole along the bloody pavements of Paris. The reference by the speaker in the succeeding sentence to "the great sane, judicious, patriotic masses of our countrymen" makes plain the falsity of this imputation.—[E. S.]

vote of thanks for his magnificent and glorious address that he has given this afternoon.

SENATOR C. G. SAUNDERS: I also am pleased to rise and second that motion. A year ago last fall when I had the honor to be President of this Association, I extended to Judge Speer an invitation to deliver the Annual Address before the Convention to be held at Cedar Rapids. To my great satisfaction, he accepted that invitation, but later, on account of the condition of his health, he was compelled to decline. It was a real sorrow to me when I received his letter, saying that he could not be with us, because I wanted him to come here, and acquire, and take back with him to Georgia a part of the spirit of the sons of Iowa. Iowa, when the Civil War came on, had a population of six hundred thousand, and seventy-eight thousand of them put on the blue and went off to the Southland, and I wanted this eloquent son of the South to come to Iowa and take back to the people of Georgia the message that we send, that Iowa loves the star on the field of blue that stands for Georgia, just as much as the one that stands for Iowa.

Mr. President, I have the great satisfaction and honor of seconding the motion of my friend from Ft. Dodge. I want Judge Speer to go back and tell the people of Georgia that the people of Iowa love them just as much as we desire them to love us.

MR. ROBERT HEALY: May I amend my motion already made, asking that our distinguished visitor from the South may be made a lifetime and honorary member of this Association. (Duly seconded.)

THE PRESIDENT: I feel that I should have recognized Major John F. Lacey.

MAJOR LACEY: I had arisen to make the motion which my friend from Ft. Dodge so well made. I now ask that I may second the same. Georgia has always been a dear State to me, because my grandfather was born there. My grandfather was born in Georgia and I was born in Virginia. But my lot, in the early days, was cast in the Hawkeye State.

What was so well said by Senator Saunders, I have always believed in, that our friends were never out of the Union. They have come back, come back to stay. They never were really outside. Every shot that was fired by the Confederate soldier against the Stars and Stripes, was fired against the Star of Georgia. But the most delightful thing of all things that followed the Civil War, was that that son of the South, Abraham Lincoln, that son of Kentucky, brought the Confederacy back into the Union the very day that the Stars and Stripes were raised again on Fort Sumter. On that day the assassin's hand struck down the gentlest heart in all the world, and all through the Southland, there has been, day after day, from that day to this, a steady and growing feeling along the lines so eloquently presented by our friend from Georgia.

I remember one of the Congressmen from South Carolina saying with some earnestness: "You all didn't whip us; we simply wore ourselves out trying to whip you." That was about the size of it. I visited Chickamauga when the troops were gathering for the Spanish War, when the sons of Grant's army and Lee's army were drilling on that battlefield, and I visited the 1st Mississippi, which was camping alongside of the 52nd Iowa. One of those Mississippians said to me: "The only difference between you all and we all is, that you all guess and we all reckon."

So, we rejoice this afternoon here upon the threshold of the Gettysburg meeting, to have this splendid son from the South, this splendid Jurist from the Empire State of the South, speak to us, the lawyers of Iowa, to speak our language, to speak their language. I visited the battlefield of Waterloo, and I stood alongside of a young Englishman, born in New Zealand. He had never seen the North Star until ten days before he met me. Yet we spoke the same language; we talked Magna Charta; we talked of the very foundation of human liberty.

I am glad to have these representatives of the Iowa Bar arise and say to Judge Speer that which he knows when he looks them in the face, that we were glad to have him here and thank him for his splendid discourse.

A unanimous rising vote signified the result of the vote of the members of the Iowa State Bar Association.

JUDGE SPEER: Mr. President, and Gentlemen of the Iowa State Bar Association: I am deeply grateful for the signal and sterling honor you have conferred upon me. I thank you with all my heart. The truth is that the hearts of the Southern men are always very close to the old flag, even in the hours of our bitterest dissensions. I remember an incident told me by a man who was present in the harbor where the Confederate Cruiser Florida was lying at anchor. The men were not expecting an attack. With perhaps some slight violation of the neutrality laws a U. S. Man of War steamed rapidly into the harbor, with the men all at quarters. A large Brazilian Man of War was lying there and began to get up steam with the apparent idea of resenting the insult. A young Confederate officer went to the captain of the Confederate cruiser and said to him: "If those old yellow dogs catch up with us, if you will let me man one of our guns with our men, I will help you fight them." I always believed that if there had been any intervention by Queen Victoria or Napoleon, the interveners would have found themselves in the attitude of the man who interfered with the quarrel of the husband and wife.

At this time, an adjournment was taken until 7:30 P. M.

BANQUET PROCEEDINGS

(Martin Hotel, Thursday Evening, 7:30 O'Clock)

RESPONSES TO TOASTS

JUSTICE HORACE E. DEEMER, *Toastmaster*: Judges and Lawyers of the Iowa State Bar Association: This has been said to be a judges' convention, and you will rarely make a mistake in calling whoever you meet, "Judge." They are all either ex's or would-be's, or present judges, and the wonder of it is, when we look them over, how they ever came to be judges at all. Some of our friends are more surprised than we are about it ourselves. However, we have enough members who are really lawyers to have an organization in Iowa known as the Iowa State Bar Association.

I hope it is well with you lawyers, not as they tell of the Chicago lawyer, with whom business became a little dull, and who moved to Detroit. He met a Chicago friend who hadn't heard of his removal, who asked him: "How are you getting along?" He says: "Business was awfully dull in Chicago, so I concluded to take my witnesses and go to Detroit, and I have had pretty good success up there."

Speaking of witnesses, a pauper culprit came into court one time and the judge appointed counsel to defend him. As a sort of a joke he concluded to appoint two of the leading members of the bar to represent the defendant. They went over and consulted with their newly made client, and while thus consulting the judge overheard something about an alibi. Finally the lawyers leaned back in their chairs and looked as if it was a hopeless case. The judge said: "What is the matter, gentlemen?" The indicted said: "Judge, I wish you would let me trade one of these lawyers for a witness, I think I would get along better."

The last time I told the story I am about to relate I angered

a man who was present. But I see no one here from that county to-night. It happened down in Southwest Iowa. An impecunious culprit was brought into court, and the judge before appointing counsel asked the fellow the usual questions, and said: "Mr. Smith, here is an ex-attorney general of the State of Iowa, a good lawyer, at one time received his party's vote for the United States Senate; the next person to him is our State senator, and over here is a man who used to be county attorney, and there is another fellow out there in a side room, you look these men over and pick out the one you want." He looked over this one and that, and finally said: "Judge, I guess I will take the fellow out in the other room."

The judges, particularly the appellate judges, are getting along pretty well. We are reversing the usual number of cases, about forty per cent,—and this reminds me of a story about a Nebraska judge who was being reversed quite often, but to whom there finally came an affirmance one day, and one of the lawyers who met him said: "Judge, I see the Supreme Court affirmed you yesterday, I congratulate you." "Well," the judge said, "notwithstanding, I still believe I was right."

We have had some leading cases in Iowa. They are not all in the book of selected cases. We had one with reference to a meteorite or aereolite, an original case, a leading case, the only case of its kind in this country; it is a leading case upon the subject, decided by the Supreme Court of Iowa. I have really forgotten whether the court decided that it belonged to the owner of the land, the tenant in possession, or the finder; at least, it decided the case—a leading one.

Then we have another leading case in Iowa, allowing railroad and other attorneys to have an injured plaintiff compulsorily examined to see whether she was really injured. We are going to have more leading cases now, because we have had another judge added by the last legislature. We would have added two or three more if it had not been that we forgot all about the Constitution. Judge Wade says it was all right anyway, since we passed four legislatures without adding any and there were four due at this time. But he always has a happy way of getting around the Constitution.

Of course, the last member added to the bench always writes the leading cases, especially for a few years. So we have the habit of first calling upon him who by precedent we denominate the "Infant of the Bench." We will call upon him for one of his master pieces, one of his leading cases. I refer to Justice W. S. Withrow, of Mt. Pleasant.

LEADING CASES

Gentlemen of the Bar: If I shall measure up to the cordial greeting just extended, which I hope I may take as an expression of good wishes upon entering into the larger work of the Courts of this State, I shall feel grateful. All that Judge Deemer has stated does not yet sufficiently explain the increase in membership of the Supreme Court, or its present personnel. I think something more is due you as members of the profession.

Years ago, when Colorado was a new State, a young man recently admitted to the bar began his practice in one of the outlying counties, and, of course, passed through all the troubles and vicissitudes of a young lawyer's life. Finally there came to him a client. The young lawyer procured a copy of the petition and examined it carefully. He concluded it failed to state a cause of action and thereupon filed a demurrer to it, which, out of an abundance of precaution, he verified. In due time the matter came on for hearing before the trial court and it was argued and submitted. Something in the expression of the judge as the papers were handed to him caused the young man to feel that perhaps some error had been committed. What it was he could not understand. Thereafter, at the first intermission, he inquired of the judge wherein he had erred. He was told of the situation and was mortified and chagrined, telling the judge that he was just beginning his practice, and if knowledge of that should come out, it would ruin his prospects. The court promised him, so far as he was concerned, it should not be referred to. In some way it became public. The people learned of it and it seemed to spread over the entire State. The voters took it up and nominated him to the Supreme Bench and elected him. They said they wanted one man there who could swear to the law.

Now, that might be one explanation of the increase in membership, although it is not intended as a personal reflection upon any one. But the feeling, perhaps, of the people upon learning of the appointment which had been made—for this is not an elective position which I am now filling—I think, may be aptly illustrated by the experience of Mr. Hooley, who came to this country as a young man. He first secured employment on the streets of New York City as a common laborer. As time passed, he became foreman and active in the politics of his ward. Larger opportunities opened as time passed on. He secured city contracts and acquired wealth, power, and influence. From the little home they had occupied in the tenement, his family had moved at different times, until finally they had taken up their residence in one of the fashionable districts of the city. All seemed well, and the future bright, with one exception. Mrs. Hooley was dissatisfied because she was not accorded the social position to which she felt they were entitled, and in a family conference they concluded what they desired would best be secured by forming an alliance with some active church organization. Considering the matter thoroughly, they determined to make application for membership in the Episcopal Church, and upon so doing, were told they would be received on the following Sunday. Mr. Hooley, in telling a friend about it, said that he had hoped the people were glad they came, but that he really had his doubts, "For," he said, "you know, when we went into the church on Sunday morning, the people all rose in their seats and commenced saying, 'Hooley, Hooley, Hooley, Lord God Almighty!'"

All this is by way of preface to a short treatment of the subject assigned to me. A complete discussion of it is impracticable. In the brief time which may be given to the subject of leading cases, I may mention only by way of illustration and brief comment a few which are the high points in our jurisprudence, and which have marked epochs in the life of a people. Before noticing a few of the cases of the past hundred years or less which have had large influence in the real development of individual and public rights, may we advert to earlier decisions, some of which were no less important than are the leading cases of the

period of our constitutional history and others interesting because they are unique.

In the General Court of the New Haven Colony, sitting in 1640, one John Jenner was accused of being drunk with strong waters. Upon due hearing, as the record shows, he was acquitted, the court finding that "the weakness appeared to be of infirmity, and occasioned by the extremity of the cold." Argument is unnecessary to maintain that this decision was based, not upon the letter, but the spirit of the law. To the regret of many, in these later days, that decision does not stand as a leading case. But while there has been an apparent tendency to depart from that most sympathetic and humane decision, it is interesting to find that now and then some court so far applies literally the facts as to give expression to novel law. In this connection may be noted a decision of an Illinois court, in a proceeding to condemn certain intoxicating liquors, to-wit: bottled beer, found in the possession of one who had not the lawful right to keep and sell that commodity. The proof seemed clear, and condemnation and conviction certain. Before finally passing upon the matter the justice examined the impounded liquid, counted the bottles, and made a careful and expert test of the contents. Satisfied at last, he dismissed the proceedings with the ruling, that while the proof showed that there had been taken into possession by the officers a quantity of bottled beer, which evidently had been held for an unlawful purpose, yet the action must fail, as there were only twenty-three bottles, and it required two dozen to make a case. That should be a leading case. It settled a commercial question with mathematical precision.

From these illustrations of the law as sometimes applied, may we turn to others which affect private rights, personal liberty, and the public welfare. "Every man's house is his castle," is one of the great declarations of individual right. Secure as we are in our homes and in the sacred privacy which means so much to domestic life, and which is a source of power and strength to organized society, we accept almost as commonplace that rule of right which first had exhaustive discussion in *LeMoyne's Case*, reported in 5th Coke. The Court which rendered that great decision may not have had a prescience which could pierce the

veil of centuries to come, and see all that it meant for civilization, but it declared that which in substance is now written in every constitution.

More than ever is this the day of woman. With gradual movement, her demands for equal rights have by successive steps brought her near the goal of political equality, while as to all things else, she is under the law the peer of man. That result has come as the world has realized and better understood the real meaning of "Woman's Sphere." Excepting only the right of suffrage, and of holding office, and in some States that exception no longer prevails, she now stands equal with the sex which some who are experienced husbands no longer call the "Lords of Creation." And to her credit be it said that all she has accomplished has been without the militant methods which are such a reproach to the movement in the mother country.

The case of *Manby vs. Scott*, decided by the English Court of Exchequer in 1663, is among the earliest and is a leading case fixing the obligation of the husband for such expenses as are necessarily and properly incurred by the wife for her support. Since then the meaning of the words, "necessary and proper," has been enlarged, at times by judicial action, but perhaps more often as a result of family discussions in which the ayes always have it. That case was an early step towards woman's emancipation. It recognized in principle that which in effect was a partnership between husband and wife, and was a strong declaration of her rights, which as time advanced had been enlarged and has been the basis of much she has since secured.

The convulsion through which the nation passed which, among other things, settled a question which the framers of the Constitution had avoided, was the culmination of a series of events to which judicial decisions from time to time gave emphasis. Who can take up the *Morris Volume* of our Iowa reports, read from it the first case, that of the negro, *Ralph*, in *habeas corpus*, without a thrill of pride that in 1839, when the storm was gathering, there was in this new territory a courageous court speaking for a fearless people. It said that when a slave is permitted by his master to come to the Territory of Iowa from a slave State he cannot thereafter be taken into bondage. Once upon the soil of

Iowa, he becomes a free man. That decision was not out of harmony with any rule of the Constitution or the Act creating the Territory. And it was in perfect accord with that live and persistent hatred of wrong which was characteristic of the pioneers of Iowa, and was prophetic of the attitude of the State when the time for action should come. I need barely mention *Sanford vs. Scott*, the famous *Dred Scott* decision. It brought almost to the breaking point the tension of the time, and perhaps more than any other single influence hastened the coming conflict. I pass with slight reference the slaughter house cases, in which the right of a State to exercise the police powers in the interests of public health found strong expression, and which has since been so extended as to carry its protective principles to our homes and to our tables.

After the civil war was the period of reconstruction. Much that was then done in the name of the law, we must condemn. But since the early 70's this Nation and its States have been passing through another period of reconstruction, the essential results of which meet large approval. *Munn vs. State of Illinois*, and associated cases, decided in 1876, and known as the *Granger cases*, fixed in this nation the right of control by government of public service corporations. That case limited and qualified, but did not overrule the *Dartmouth College* case, itself a leading utterance upon a great question, and upon which more than any other rests the fame of Webster as a constitutional lawyer.

With the *Munn* case declaring the right, with the *Minnesota* and other State rate cases, recently decided, enlarging upon it, and preserving to the State and to the Nation each its sovereign powers over such matters, with a long line of intervening decisions marking the boundary between public and private rights, and public and private duties, and with the fixed rule that the exercise of the power of eminent domain carries with it obligations which must be met, and a right of control which cannot be avoided, the period I note is eventful of real achievement. Since the *Munn* case, each year has witnessed a growth in interest and a broadening of the public understanding of the great questions involved and of their underlying principles. Out of all the agitation has come legislation; the courts have in the main con-

strued it according to its intent, and it now may be said with real assurance that save in some of its details, another question of public right has definitely been settled.

Applying the decisions in the Granger cases, with the legislation and decisions which have followed it, to conditions that have existed in the various States, and to interstate commerce, there has been created a system of regulation not perfect, but comprehensive in its scope and intended to do equity to all. We may not wonder that at times legislatures in response to apparent public sentiment may have demanded more than is just. But where injustice follows, it cannot be for long. There is with the people that sense of fair dealing based upon an active conscience which will as quickly remedy a wrong when discovered as it will positively assert a right.

I have given but glimpses of some leading cases,—a few of many in which the courts have met new situations and fashioned the law to fit them. They are interesting facts in judicial history. Mrs. Giblin went down into the city to witness the parade of the militia of which her son, Dennis, was a member. Upon her return she told her neighbor, over the back fence, of the grand spectacle, the music, the flags, the officers on their prancing horses, and the splendid appearance of the soldiers. "But, do you know," she said, "of all the men who were marching, my Denny was the only one who was keeping step." Like Dennis, whose doting mother viewed his movement with mistaken eyes, a court sometimes may be out of step with the requirements of the times; but it can only check and cannot arrest the forward march. But a court which may by some decision seem out of line may really not be wrong. It may with greater wisdom, in meeting a new condition, apply old principles in such manner as to appear beyond the law, and yet be within it; at the risk of seeming radical or almost revolutionary, it may so adjust and declare the law as to be in harmony with what is, even at the risk of overthrowing that which was. Such decisions often become leading cases.

That the inspiration of our laws will always be the public good must be the hope of every citizen. That the courts will generally fit the rule to the facts, and so pronounce the law that

it will be in harmony with the destiny of this people, there can be no doubt; and as the history of the past has largely been written in the great decisions of the times, may the record of the future be marked with judicial utterances which always will stand plumb with right.

THE TOASTMASTER: Our brother from St. Paul who has honored us with his presence is compelled to take the train soon. I forgot to pull down my volume of "Farnham on Water and Water Rights" to see whether or not he is the guilty party, and I wish he would explain to us whether he is the author, and if so, why?

MR. CHARLES W. FARNHAM: I never saw that book but once. I was in the office of a Mexican lawyer, who had quite an extensive law library; most of the volumes were bound in calf, but the Farnham book was bound in sheep, with a very mild type. Perhaps if I had lived in Iowa I might have produced something on water. But I am not going to take one minute of your time, because the hour is late. I do want to repeat what I said this morning, the earnest hope that you will put Iowa a little bit farther on the map of the American Bar Association.

I have had a good day and enjoyed it. I bid you all good night, and thank you for the good time.

THE TOASTMASTER: I regret to announce that the Honorable Maurice O'Connor, who was to have responded to the second toast, is so busy with a district judge in Northern Iowa that he had to send a telegram saying he could not be here.

We wanted, however, to have on the program tonight somebody who sees us as others see us and the committee had a hard time to find one. We wanted to get some one who didn't dare throw rocks, so we picked out a banker. I do not know that he belongs to the bankers' trust. I wish we had more bankers' trust out here in Iowa. He does not live in my part of the State. I do not know that I could induce him to extend any new or old trust; at any rate, we feel perfectly safe from him.

It is my pleasure to introduce to you Honorable J. A. S. Pollard, Banker, of Ft. Madison, Iowa, who will talk to us on Progress and the Lawyer.

PROGRESS AND THE LAWYER

Mr. Toastmaster, Heroes of the Woolsack, and Conservators of Trouble: A lawyer friend in my home town, carrying in his hand the official program of this convention, recently stopped me on the street and relieved himself of the following voluntary tribute, "I believe you get more invitations to talk about things which you don't know a d—n thing about than any man I know." The honor of an invitation, extended through your President, to address the learned members of the Iowa State Bar Association, is highly appreciated; but back of that was the origin,—a suggestion must have been made by some party or parties unknown to me, and what arouses my curiosity is, who had the nerve to play a joke of that kind upon the distinguished jurist? Whoever it was I hope he is present to endure the punishment you all must suffer, although I promise the agony will be very brief.

Judge Deemer wrote that he was not sure whether I was a lawyer or not, although he had the impression that I had been admitted to the bar; but he added that however that might be, you would be glad to have the views of a layman, an opinion from the outside. The "Lord Chancellor" possibly received his impression from that old time worn confusion as to the meaning of the word "bar" which is responsible for so many lawyer jokes in the comic papers,—for instance, "Have you ever seen the prisoner at the bar before?", and the witness replies, "Yes, that's where I met him," etc., etc. But I assure you that I have always kept on the outside of all bars—even those which you histrionic experts picture so pathetically (when acting for the defense) as shutting off the light from the deep stone recesses of the State Hotel at Fort Madison. I presume if you really knew of the light and laughter within those gray and somber walls, the ball games, vaudeville entertainments, lyceum courses, the soft strains of an orchestra playing while the inmates sumptuously dine on better meat than the beef trust allows us "laymen" down town, on the outside, it would make no difference, you would still pull out the tremolo stops or bore for water and feel hurt if the lachrymal results did not include the court reporter and bailiff.

I have gained no knowledge of law, gentlemen, through burning the midnight oil or delving into formidable volumes at any

school of law. I have no license to shout the hidden wisdom in some statute passed by a legislature of farmers as being the essence of human knowledge. I am an ordinarily quiet, soft-spoken business man, still an undergraduate at the school of experience, which institution boasts no college yell. The only legal knowledge I have has cost me nothing but mere money, and the only gray hairs I carry were acquired coincident with the same experience.

The privilege of standing before a body of lawyers and of having them do the listening, instead of the talking, was to me so marvelous in its contrariety, so inconsistent with the ordinary plan of human civilization, that it was a bet I could not overlook, an experience to hand down to posterity, a proof of the wisdom of those old saws about its being "a long lane which has no turning" and "all things come to him who waits." I have joyfully embraced the opportunity, even after a quarter century's business experience which has proved another adage that it is cheaper to keep one's own counsel than to tell your troubles to one's own lawyer. To carry out this inversion I immediately selected an antithesis for a subject, "Progress and the Lawyer," for where can one find any correlation between these two extremes in the light of present day opinion and current monthly literature?

If you think I feel at ease in this crowd you are mistaken. You who are so familiar with court procedure and are so ready to argue a cause, whether you have studied it or not, would probably feel like I do if you were called upon to fill a pulpit, although I don't doubt that some of you in such a position would immediately begin preaching from the text, "The way of the transgressor is to hire a good lawyer," and ask the choir to sing that grand old legal anthem, "If you ain't got no money you needn't come around." I have never felt much embarrassed to find myself addressing a gathering of financiers whose aggregate wealth should make me feel like a plugged nickel that had gotten mixed up with the gold reserve, but to be placed here and expected to say something instructive or helpful to a bunch of lawyers, makes me really feel like a Laura Jean Libbey novel which has been misplaced in a row of Supreme Court Reports. My natural inherent modesty, which at times threatens to strike

in and cause serious complications, makes the situation very difficult.

However, my salvation may lie in the fact that man usually feels better and more kindly disposed after a fine dinner such as we have partaken of this evening. It is a physiological fact that at such times he isn't nearly so likely to kick the dog, spank the children, or to be critical of words and phrases. It is the hour when mental spectacles assume a roseate hue which colors the outlook with the tints of harmony—the glorious, halcyon, after-dinner hour. I have known such gatherings in other associations to be carried to more hilarious extremes, but as I note the menu conforms strictly to the truly wonderful liquor laws of Iowa, and likewise to the standard set by the distinguished Presbyterian Synod which rules our nation under the milk white flag and conducts our diplomacy under the inspiration of grape juice, I presume that here the impressionistic recollections of the morning after are never experienced.

It might be well, just in passing, to refer to my subject. Progress is a vital topic to-day. A large majority of our citizens claim to be progressive. The learned judges of the Court of Appeals recently decided that Progressives belong to a party. We'll not mention names, but we all know who the party is—he recently brought your distinguished profession into the lime light by proving in a regularly constituted court of law “by his straightforward testimony that he never drank enough to do him any good,” and that stimulants offered his dynamic body would be like gilding refined gold.

In order to describe progress, in order to prepare my case as thoroughly as a lawyer should, I might take you back to the nebular hypothesis, and lead you gently forward from chaos to cosmos, from the decalogue on Mount Sinai down to the latest ermine hobble skirt—the recall of judicial decisions,—but the time limit would not permit, besides it needs no words of mine to demonstrate that some of the gas from the nebula still survives in your ancient and honorable profession; so with your kind permission, which I know will be granted most cordially, we will jump a few billion decades and contemplate the first bar—a sand bar of antiquity, washed by prehistoric seas. Here the

mineral, mud, and salt water of antiquity gradually form a substance, the substance through the centuries gradually developing into something resembling a crude and bashful oyster, the oyster growing a tail, passing progressively through the tadpole and pollywog state of existence, finally by watery stages reaching land, the bar, a higher form of life, until within the progressive course of events recorded within the cycles of ages, we have the fowls of the air, the beasts of the field, then the gorilla, the chimpanzee, and finally the lawyer.

It is interesting to trace the development of the lawyer in the progress and evolution of society. As the light of civilization pierced the darkness of ancient days when differences of opinion and titles to property were settled by the war club of the savage,—by force and bloodshed; as law and diplomacy between nations, the invention of gunpowder, and the cultivation of the arts and sciences rendered battle axe and lance obsolete and made warfare costly, the peoples of earth turned to win the greater victories of peace which bless and make them happy and prosperous. The conqueror who laid waste fruitful valley and hillside, the buccaneer who scourged the seas, were relegated to history and light literature, they had gone out of fashion and the world held no place for the non-producer, the guerilla, or the pirate. But the spirit of the conqueror and the buccaneer survived in the breast of the harmless looking lawyer, who evolved other and quieter methods of plucking the fruit from the growing tree of commercial progress, and by the gentle art of monopolizing the seats in halls of legislation and controlling political offices, he sits enthroned over the destiny of nations, his power the hopeless mazes of legal statute and multiplicity of decision, and his deadly weapon, the bill for fee and retainer. Is it any wonder that progress falters and the millennium, like a scared comet starts out upon a parabolic curve to the windy spaces behind the moon, never to return?

Like you, gentlemen, I also belong to the parasitical class which does not endow humanity with potatoes or suspension bridges—the non-producers. My occupation is that of a banker, minus the personal burden of wealth. I do not call banking a profession, not in this association, for you would not stand for it,

any more than the saw-bones or sky-pilots. The business of banking is now taught in all the great colleges like other professions, but one cannot obtain a degree which qualifies him as a banker by two or three years' study. I have been working at the trade over twenty-five years and the lawyers put a new one over on me every week, so I know I could not claim a diploma. The business of banking is making some progress although in this country about fifty years behind the times. We have reached the point where the counterfeiters do not bother us with bad bills so much as the legislatures. The banker does not care for a degree anyhow, what he wants is the deposits. The public does not love the banker, but he would rather be trusted than loved,—it is said to be a greater compliment. The public unburdens its condition and difficulties commercial and domestic to the barrister. It reveals its bodily ills and failings to the doctor of medicine. With full confession of its moral shortcomings it seeks salvation from the doctor of divinity, but it pays the banker a higher tribute, it consults him on points of law, morals, physical well being, and crop prospects, and leaves with him, upon an unsigned entry at the counter, its hard earned cash.

We frequently call upon lawyers to address our bankers' conventions and they are usually most complimentary in their references to the banking business, so it is only proper courtesy for me to reciprocate at this opportunity. A lawyer who failed to start his speech before a bankers' convention without some reference to his difficulties in establishing credit with banks would not be proceeding in regular form. And really there are some strong contrasts between the advice offered by attorneys as to the wisdom of making loans to them personally, and making loans to other individuals, upon the same collateral.

A lawyer who had experienced some difficulty in converting his prospects into cash once asked a banker what he could do to establish his credit. Said he, "I have lived in your community long, I have a good practice, I have no available collateral and I do not know of any one willing to endorse for me, but there must be some method by which I can obtain a loan upon my personality, what is necessary?" The old banker looked him over and

said, "In the words of the scripture, my friend, you must be born again."

You know there are some duties which the banker performs which infringe upon the lawyer's inalienable rights and privileges—such as making collections, answering inquiries, guessing at titles, etc., etc., but the quality of the service is quite different and the charge basis about 3,936 per cent in favor of the lawyer.

As a banker I have always been most particular never to attempt to give legal advice. You know a great many people expect their banker to give them legal advice. My invariable answer to any such inquiry is, "I am not a lawyer, the thing for you to do is to go and consult an attorney on this subject and pay him for his advice." But do the lawyers appreciate this ethical delicacy? Not a bit of it. In a near-by town is another banker, who for forty years has handed out what he calls free legal advice. The lawyers tell me that banker is worth more to them than a dozen such ethical bankers as myself. Even when I refused and my competitor accepted a proposition to issue a little book entitled "Every Man his own Lawyer," written by a Justice of the Peace, the bar in my section had only the highest compliments and encouragement for the other banker and informed me that he had made them more business through the little volume than I ever sent them in a long career. Such is the ingratitude of your profession, and how much sharper than a serpent's tooth it is to have a thankless bar.

When I sat down to look into this subject I thought I would commence with first principles to see what law really is. I took the first definition in the dictionary, as I suppose that is the accepted one, which is "The will of God as the rule for the disposition and conduct of all responsible beings." That sounded just grand to me, and then I turned to the Code to see what were the duties of a lawyer. I expected to find that his duties were simply executing the will of the Omnipotent One, as all the lawyers I knew acted as if their business was nothing less than that. I knew the lawyer took a solemn oath to discharge certain duties outlined in the statute and I wanted to learn what those duties were. I did not find any direct mandate requiring him to act as proxy for the Almighty, but I did find by a perusal of

those statutory duties that the lawyer is at least one of nature's legally made noblemen.

It is his duty to maintain or counsel no actions other than those which appear to him just, to employ only such means to win his case as are consistent with truth, never to seek to mislead the judges by any artifices or false statement of fact or law, to abstain from all offensive personalities, and never to reject the cause of the defenseless or the oppressed. Why, it sounds like the obligation of a fraternal society whose precepts and tenets are designed to protect innocent maidens, wealthy widows, and the Methodist Conference.

I am doubly proud then to meet with gentlemen of this profession who abstain from offensive personalities, who advance no fact prejudicial to the honor or reputation of a party or witness unless required by justice, and who never, never quote decisions to the Court which they are not firmly convinced are the law of the land, and above all things cling to the bright and shining truth. Gentlemen, it is a noble profession,—again taking the first definition in the dictionary for the word "profession."

Naturally when it became known that a layman had been invited to enter the inner *sanctum sanctorum*, upon the invitation of the chief Jab Jab, and have the privilege of speaking his mind to the faithful whose motto is "Nit legatum slithers et ding bat el bug house," which being translated means, "If you're not a lawyer you don't understand the subject," I commenced to get advice from the downtrodden people and the ultimate consumers. The consensus of that advice was, "Give 'em hell," and I confess that I quietly started out expecting to gather material which was to prove that the lawyer had been left way behind in the march of progress, that while we had made gigantic strides in all other professions, in commerce and in industry, our courts and our lawyers were drifting along some two hundred years in the rear of the procession. I believe in aiming high, so first I tackled the United States Supreme Court. Possibly some word of this reached that august body and hastened the Minnesota rate decision which must be called progressive, but I hope not. There is a quite general impression that this high Court has stood as a bar to progress, and through its decisions has checked much of the

progressive legislation emanating from the various State governments. I found in an article by Charles Warren of Boston answers to my questions without further research. He states that the twenty-four years between 1887 and 1911 inclusive, have constituted the period most productive of liberal, progressive, and even radical social and economic legislation in the United States, and that the criticism, if just, must apply to cases during this period and in cases arising under the "due process of law" and "equal protection of the law"—clauses in the Fourteenth Amendment.

He fills up many pages with citations, but I gather from this article the fact that out of five hundred and sixty decisions based upon these clauses there are only two in which any State law involving a social or economic question has been held unconstitutional by the Supreme Court. It has upheld every State labor statute but one, every State anti-trust law but one, every statute abrogating the doctrine that an employee could not recover damages for injuries due to the negligence of a fellow employee; pure food laws, laws restricting conduct of mercantile business, gambling and bucket shop laws, even liquor, prohibition, license, and local option laws; laws limiting the individual's liberty of contract or of action, or of conduct of business for the general welfare, laws regulating cattle diseases; statutes regulating railroads, from rates to penalizing them for letting thistles go to seed, stopping freight trains on Sunday, and double damages for killing a cow if the railway maintained a bum fence along the right of way (an Iowa law, of course); statutes for regulating rates of public service corporations, every State banking regulation brought before it, laws regulating insurance and telegraph companies, the public dam acts of Wisconsin, and other dam acts, and every kind of dam tax law that has been conceived in the bewildered brain of the long whiskered Populist and enacted through the legislature of Bleeding Kansas.

I render a verdict of "not guilty" on the charge of non-progressiveness of the Supreme Court of the United States, and the relief felt I doubt not will be world wide. We all know that the Supreme Court of Iowa has been equally progressive, in fact if this progress keeps up our wealthy farmers will all move to

California where they don't ask embarrassing questions about personal property, and we will have to rope and tie our manufacturing plants to keep them within our State boundaries.

So in the sense of opposing progressive State laws and "social justice" the public is "not talking" to our Supreme Courts. The public does not understand the facts, that is all, and of course it is beneath the dignity of the judge or lawyer to inform the public of the facts, and there you are. The prejudice remains and perhaps after this generation of judges and lawyers has passed away the truth will become known and you will all be vindicated. I would imagine it pleasanter to be vindicated here above, but stick to your ethics—whatever they are—and maintain your dignity even if it curtails your finite existence. The great "common peepul" are not lawyers forsooth, so why try to explain to them?

I wonder if you realize how it feels for one of us, the "great unwashed laymen," to sit down in company with a couple of lawyers and express ourselves upon some topic of the day, and then to have one of those lawyers turn, raise his eyebrows and coldly enquire: "You're not a lawyer, are you?" and there's where we commence to weaken and answer faintly, "No, sir," and then the lawyer turns to his Phi Delta Phi colleague with a patient shrug, ignores us utterly, and we quietly sink into the pool of oblivion so deep that no further bubbles arise from us in that conversation. The bankers used to have that disease. The banker was, in fact, regarded as the haughtiest of business men, and there was some reason for this, because he does business on other people's money. But the banker has had to "can" his dignity and get out into the blessed sunlight and hustle for business, and he is enjoying it and feels more like a human being withal.

Let me remark in all seriousness that it is unwise and also expensive to ignore public opinion. In the last analysis it creates laws and judges and it can change and discard them. Public Opinion is the predominating, governing influence. Its expression is the voice of the people, its approval the charter of success, its support invaluable, and the law is but its police power. The hand maiden of public opinion is Publicity, which paves the way

and makes effective our great governing force. Publicity is the great modern remedy for all ills that afflict the body politic. It will cure commercial colds and financial chilblains, and properly applied to the enlightenment of the general public about our courts, which simply enforce public opinion crystallized into statute, is the surest remedy for the so-called unrest which finds expression in demand for the recall of judges and their decisions, changes in the method of their appointment, and the assassination of all lawyers.

In my humble opinion the majority of our people are not carried away with new ideas about our judges and decisions to anything like the extent that some leaders who make that a specialty would have us believe. I have seen no indications of any popular uprising or insistent clamor showing that the people are ready to assume the tremendous responsibility of changing our time-tried and tested system of jurisprudence. I am inclined to think that the issue has acquired prominence by being incorporated with other progressive reforms—so-called—that are becoming vital issues. I meet personally, say, one man in one hundred who expresses any particular convictions about the recall of judicial decisions.

But there is another subject pertaining to law about which not one man in a hundred fails to express himself very forcibly. If you happen to observe some individual tearing his hair, foaming at the lips, wild-eyed, and jumping up and down in conversation with some one the chances are that the individual is expressing the marked, general, I might say concrete, discontent with what has been called the "Law's delay." And yet, gentlemen, that is a misnomer, for it is not the law's delay that is driving so many of us to the nut factory, it's the lawyer's delay. Here, again, I do not believe our judges are lagging far behind public opinion. They have been quick to recognize that the progress of this age demands prompt administration of law, and I believe are very generally and honestly trying to apply modern methods and system to the machinery of the courts. Our courts should not through lack of system or diligence cause a condition whereby the ordinary citizen will suffer great injustice rather than endure the tedious process of law and the unwarranted expense which

delay always entails, and whereby only those who are either stubborn or actuated by passion or revenge will appeal to them. That is surely not in accordance with the highest purposes of law. I am speaking only of the detail, the machinery of legal procedure. I recognize the fact that the Law must be behind the times, that law follows public opinion, and as Justice Holmes recently said, "Law embodies beliefs that have triumphed in the battle of ideas and then have translated themselves into action. While there is still doubt, the time for law has not yet come, the notion destined to prevail is not yet entitled to the field." I recognize that law is a matter of wise decision, of intelligence rather than speed, but ordinary legal procedure involves no great new principles which threaten the Constitution of the United States or the underlying principles of government. In actions where careful preparation is essential to show what certain laws are relating to the case—laws already established after the most exhaustive research and careful deliberation—and the presentment of evidence, the business world asks the legal fraternity to advance the spark and open the throttle a trifle.

What constitutes the great physician? The M. D. who dreams about a surgical case and takes his time about performing it? No, it's the doctor who can get into a man's insides quickly and get out even quicker. In business you must go to a busy man if you want to get anything done—the man who lacks diligence is always "too busy" to attend to it. The same rule must hold good in the practice of law. I would expect the best quality of legal advice from the lawyer who uses system, diligence, and promptness.

The people are not willing to maintain court houses, salaried judges, court officers, and janitors, to have those facilities used as social clubs where lawyers may for unimportant reasons, or for personal convenience, have cases postponed or drag actions along at their own sweet will to the delay of other litigants. In industry to-day they take moving pictures of workmen and then analyze their motions to save a fraction of a second. In commerce and finance no head of a department is too high to escape the criticism and advice of the expert accountant or the professional engineer whose business it is to systematize and save time.

In this day of commercial progress in every department of trade and commerce as well as in most professions, economies and improvements are being made, and the lawyer will have to recognize the tendency of the age and learn that success belongs to the prompt, efficient professional man, as well as to the prompt, efficient, and skilled workingman. In every department of their throbbing entity, trade, commerce, and finance depend upon the lawyer, but in this day of the "survival of the fittest" they are not willing to depend upon a slow or careless lawyer. I do not mean that any lawyer here is lacking in diligence. You seldom find professional men who take the trouble to attend their association meetings who are of that stripe and the prosperous lawyers here know without my saying it that business goes to-day by preference to lawyers who stand well in their profession, who are known to have a practical knowledge of business as well as of law, and who have the reputation of being hustlers.

The day is coming when the eye of the public will make a mental moving picture film of the opening day of court. It will scan the docket at the close of the session. It will follow the trial. It will follow the judge and the lawyer to their offices, it will record whether they are energetic, systematic experts, and how they are equipped as to working tools—law libraries and systems, for all these save work and increase efficiency in the profession just as well as in industry or commerce. The censoring board of public opinion will sit in judgment and analyze that mental film, cut out the waste and the dead wood, and the public which gives the lawyer certain immunities, a house to work in, and the machinery by which he transacts his business, is going to require just as prompt, efficient work from the lawyer, as from the doctor, the railroad president, the accountant, or the skilled workman. And the beauty of it all is that it will save the lawyer time, worry, and trouble and give his mighty intelligence greater opportunities to shower blessings upon his clients and humanity in general. Gentlemen, it would have been easier for me to simply emanate pleasant platitudes about the glories of your profession, but you asked for an opinion from the outside and I have tried to give you the views of one individual layman for what they may be worth.

In using the calcium I have been shoving in the Machiavelian red and invidious green slides, now for the white and just a touch of lovely pink and violet!

Progress has already decreed that the lawyer of the future must be thoroughly grounded in the principles of law. As in the profession of medicine the restrictions are becoming more stringent and the time required in preparation lengthened. The day is coming when a man will have to be of broad and practical education to qualify for either of these great professions. I hope the day will come when a college degree will be required as a foundation upon which to build the superstructure of professional training. Your profession is too great and too important to have any standard but the highest among them all.

I sincerely hope that the tendency will be more and more towards having lawyers equipped with a practical knowledge of business if they are to enter that branch of human activity. In the medical profession the time is coming when the doctor will be an adviser—a teacher of methods of right living, to prevent sickness and disease, and only use his pills and knives as last resorts. In the progress of trade and commerce the tendency is to consult the lawyer in every department of business in order to keep out of trouble and to save expense and loss. In this the legal profession, I think, finds its highest usefulness for it works for commercial and social peace. It is true that your profession has not kept all of our most progressive financiers, bankers, and captains of industry out of jail or federal prisons, but the lawyer as he increases in efficiency will be able to do better work along that line.

This is an age of specialists and you are the highest trained specialists we have. You are entitled to the highest compensation for your expert services (loud, enthusiastic applause) and I believe you never fail to get it. The lawyer who does not charge for advice injures both his profession and the public. In order to make a fee he must drag his client into court. It is better, higher, nobler work to settle the case in your office and you should not lose one cent by that concession to the good of society, and if you stand together as well as the bankers do on exchange and interest you won't have to—although I am not here to give

any advice as to "combinations in restraint of trade and commerce."

And finally, gentlemen, let me say, and I say it in all sincerity, for you have probably observed that I show no indications of having been born under the zodiacal sign of Taurus the Bull, that your profession is largely the mainstay of American commercial, financial, and industrial progress. If I referred to the part the lawyer has played in the progress of this country I would have to recite the history of the United States and picture the triumph of popular government. I would have to list the names of our patriots and statesmen, our national defenders and preservers.

We are now going through a commercial and financial readjustment which while it will probably be accomplished quietly, will not be easy, as there is no painless method of changing from limited markets and artificially sustained policies and prices to the standard of efficiency, regulated by the laws of supply and demand. It is inevitable and it will be worth a thousand times all it costs. It isn't the policy of any particular political party, it isn't politics at all, it is progress. We are upon the threshold of the most marvelous, sound, and sane commercial and industrial progress this country has ever known according to the opinions of some of our greatest economists. As progress carries American enterprise into a field bounded only by the circumference of the globe, with our unparalleled resources, our God-fearing and intelligent people, our skilled workingmen, and our trained professional men the triumph is sure and we should enter fearlessly and with confidence. In every campaign to be planned, in every battle to be fought, we must turn to the lawyer for advice and counsel. I have no doubts that he will be in the front ranks of this army of peace and progress, for he has been in the forefront of our greatest commercial and industrial progress in the past.

We will start upon this campaign well equipped in men, money, skill, and intelligence. Our country is to-day the only financially unembarrassed nation on the globe, supporting and furnishing a market for the securities of the world. It is firmly established as a great world power whose eagles of gold and dol-

lars of silver speak an international language. Imperial sovereigns are following the sun of commercial supremacy westward seeking gold for war chests out of our abundant store, while by the bounty of Divine Providence we have greater assets in field, forest, mine, and water way.

The spirit of commercial and industrial progress which has illumined every page of our Nation's history, which within twenty years has doubled the value of all property, the circulation of money and wealth per capita, the products of the farm, the homes of industry, the tonnage of vessels, and miles of railway, was born of the courage, loyalty, and patriotism of this people who through one hundred and thirty-seven years of popular government have maintained respect for our laws and support for our system of jurisprudence, under a Constitution which knows no privileged classes, which recognizes no caste, which has endured the wear and strain of over a century, and conferred upon the oppressed of every land the proud title of American Citizenship.

THE TOASTMASTER: I fancy that lawyers feel after they have been at a Bar Association meeting that they had been to the confessional and had a sort of a re-baptism, and they go home resolved to be better men. However, we generally call upon some young man to give our promise for the future. So I am going to call upon one of the younger men to give us "The Promise for the Lawyer," Mr. Schuyler W. Livingston, of Washington.

THE PROMISE FOR THE LAWYER

Mr. Toastmaster, Members of the Bar Association, Friends:

I have always looked upon after dinner speaking like the Irishman looked upon an accomplishment he had. He was sitting in a railway car swearing, and using almost as many varieties of profanity as there are brands of Heinz's pickles. A Methodist minister was sitting next to him, and he asked him where he learned that profanity. He says: "I never larned that any place; that can't be larned; that's a gift." After-dinner speaking is a gift I do not possess.

When I think of what we have had tonight and what is yet to come, and look in the faces of those present here, I am reminded of the story of the young German who came to this country to seek for himself a home. He found employment on a western farm, and while out in the field one day a storm came up. He ran to the barn. The storm proving to be a cyclone, picked up the barn and the young German, carried them about a half a mile, and dropped them in a field. The neighbors ran down to see what happened to the young man. After much difficulty they extricated him. He seemed to be sound, with the exception of a few bruises. One of his neighbors, with a religious turn of mind, says: "Chris, if the Lord had not been with you, you certainly would have been killed." The young German said: "I don't know if de Lord vas wid me or not; if he vas, he sure vas goin' some." If I do full justice on this occasion, I shall sure have to go some.

I have never been able to determine with certainty just why I have been called upon to respond to a toast this evening. A short time before I received the letter from our honored Toastmaster requesting me to take part in this program, I had been before the Supreme Court of our State, for oral argument on a comparatively important case. For the benefit of those present, who are not members of the Bar of Iowa, I perhaps should say by way of explanation, that in Iowa an oral argument is a kind of mental gymnastic exercise through which we Iowa lawyers put ourselves at frequent intervals, before our Supreme Court; not that they have the slightest effect on the Court, nor were ever known, so far as I am advised, to affect a decision, but simply to keep ourselves in practice. Let me not be understood as meaning that our judges never feel the force of our oral arguments. We have all observed some indication of an impression on a judge when he is first elevated to the Supreme Court, but overcome by the power of example and the weight of numbers, he soon lapses into that state or expression of ennui, so familiar to us all.

In the particular case to which I refer, as has been true of all cases which I have lost, the Court had rendered a decision which was so erroneous in its statement of the law in so many partic-

ulars, that both sides filed petitions for rehearing, served notice of oral argument, and after filing exhaustive written arguments, appeared and argued orally with such clearness and cogency, that failure seemed impossible. However, the Court promptly overruled both petitions for rehearing. As a fellow attorney who was standing by remarked, we couldn't get a rehearing even when we agreed upon it. As the original decision in this case was against me, it left me the loser and I have come to the conclusion that our Toastmaster tendered me this honor tonight to make up in some degree for the loss sustained. If I am correct in my surmise, I wish to request Mr. Toastmaster, that hereafter in the distribution of your favors, you give me the decisions and let the other fellow have the honors. The promise for this lawyer, at least, will be much brighter if such a course is followed.

I am somewhat disconcerted by a remark made to me by our Toastmaster just before he introduced me. While you were all enjoying the recollection of the good things we have already had, Judge Deemer turned to me and naïvely said: "Do you think we had better let the crowd enjoy themselves awhile longer, or shall we proceed with your toast at once?" I am not yet sure just what he meant. Notwithstanding these uncertainties and embarrassments, however, I appreciate the honor of being permitted to address you for a short time this evening. There is one thing in particular in connection with this program which has been unction to my soul, and I desire to take this occasion to thank the Program Committee, the newspaper boys, and anyone else who has had anything to do with it. I have been somewhat extensively advertised as Honorable Schuyler W. Livingston. It is true that all others who appear on this program have been advertised in the same manner, but they have all held prominent positions to which the title refers when applied to them. I have never held an office or position of any kind to which the title could possibly refer. I have never been even a candidate for one. So that when the title "Honorable" is applied to me, it must refer to some quality of mind and heart which distinguishes me from the other participants on this program and perhaps from the members of the Bar in general. I flatter myself

with the thought that I am probably the only lawyer of our fair State who has enjoyed this rare distinction.

The toast to which I am to respond suggests a look into the future, and as we have been warned by our Toastmaster that the unpardonable sin tonight would be a departure from the subject, it will be necessary in some degree to forget the past with all its ripe wisdom and manifold lessons. I do this with some trepidation for I have known men who have brought on themselves dire trouble and calamity by a failure to look behind. I read of a man of this kind a few days ago. He was a small man who had married a very large woman, a woman with a square jaw, a steady eye and a genius for command. After some years the little man brought suit for divorce on the ground of cruel and inhuman treatment. After he had told his story of abuse upon the witness stand, the judge turned to him sympathetically and said: "I should like to ask, when and where did you first meet this woman who has abused you so shamefully?" To which, after some thought, the worn little man replied: "Well, Judge, I really never did meet her, she just overtook me." Let us hope that no such calamity may overtake us by reason of our failure to look behind and learn from the experience of the past.

But tonight it is the future which looms before us and it is big with promise for our profession. We are not now considering the baser element or material reward which we all fervently hope and pray may at least not be diminished, but have in mind those larger opportunities for public service which our changing social, industrial, and political conditions offer. This is neither the place nor the occasion to discuss the merits or demerits of the many changes which have been made and are proposed in our political system. The changes to which I refer are chiefly the result of the extension of the direct voting principle in the form of the initiative, referendum, recall, and direct primaries. We probably all agree that the more democracy we can have that is practicable the better, but a discussion of what would be "practicable" would raise a thousand differences of opinion in this gathering, not only in our present condition, but even at a time when we are all perfectly sober.

Whether or not the cure for the ills of democracy is more

democracy is not so much our concern tonight as is the fact that we are face to face with more democracy and what that means to the lawyer. The agitation and contests of the last decade have not been so much over the fundamental problems of our civic and national life as over changes in our political organization and personal leadership. Not so much over what we are going to do as it has been over who is going to do it and how. The net result of all this agitation has been that those measures which apparently give the people a more direct voice in public affairs and those leaders who have tickled the ears of the public by their advocacy of such measures have gained great popularity.

There are those who think that under a system approximating pure democracy the people of themselves and without leadership will manage their government most wisely. This is a delusion. The people will have leaders either self imposed or chosen by themselves under any form of government and that political organization is best which brings to the front the best and most competent leadership. But when the principle of the direct vote has been carried to the limit, when the people, as it were, become surfeited with democracy, when it becomes no longer possible to rouse them to fury and action over changes in the methods of our political organization, they will stand face to face with fundamental problems of our national life, the proper solution of which, by reason of their magnitude and complexity, will require far more sagacious, courageous, disinterested, and patriotic leadership than that required for the settlement of any mere question of political organization.

Under these changed and changing conditions, where are the leaders of the future to come from? A short time ago in delivering an address to the graduating class of the Northwestern Law School in Chicago, Governor Hadley is reported to have used the following expression: "This is a government of lawyers and always has been. The profession of the law has been more influential than all others combined and lawyers have been the dominant class." This statement aroused much unfavorable comment, a representative sample of which appeared as an editorial in one of our largest Iowa daily papers, and is as follows:

The ex-governor stated a well known fact. The several State legislatures and Congress have been always under the domination of the lawyers. Some lawyers are good, and some are not. It is a proud thing which Governor Hadley said, but it is something the people ought to remember. In every legislative body there should be fewer lawyers and more business men, farmers, mechanics, teachers, etc.

Lawyers are clannish and in the legislative bodies as a rule stand together. The doctors would do the same if there were enough of them in any legislative body. The farmers in legislative bodies do not always stand together. They follow the lawyers. Hence the lawyers have responsibility and influence.

Former Governor Hadley has done the country a service by his confession.

The Governor's statement, if correctly quoted, is certainly too broad and the editor's comments entirely misleading. He is probably correct when he says that the profession of the law has been more influential than all others combined if he was referring solely to political and governmental affairs; but when he says that this is a government of lawyers and always has been, and that lawyers have been the dominant class, he certainly has not followed his usual precision in the selection of words. Lawyers do not constitute a class in the true sense of the word, any more than do doctors, newspaper men or the members of other professions. Except in matters pertaining to the practice of their profession, they have no common interests. They have no common recognized social or industrial standing and their investments and property interests are probably more varied than are those of any other profession or occupation. About the only interest that we have in common is what we have to pay, and that is more often compound than common.

It would be impossible to hold a gathering of lawyers of any size without having there men who are personally interested in farming, banking, manufacturing, merchandise, railroading, and almost every species of property under the sun. We have more jacks of all trades in the legal profession than in any other occupation, and while this may detract some from the technical efficiency of the profession, it makes it truly representative of all the varied interests of our country, and prevents united action; for the maxim, "Where your treasure is there will your heart be also," is just as true of the lawyer as it is of other

people, and being inured to opposition and more or less self assertive, they do not stand together on matters of public concern in legislative bodies or anywhere else. The real reason and the only reason that lawyers preponderate in our legislative and executive positions is not found in any class interest or united action on their part but because they constitute a body of our citizenship which has more training and learning in what we may call the science and art of government than any other. We do not have and probably never will have, a body of citizens corresponding to the English Country Gentry who were specially trained along this line. Our social and industrial structure is not favorable to its development. Nor will the American people in our opinion, take kindly to schools for statesmanship. They seem to show a marked preference for those who have lived and worked among them and who understand them. As a rule, they would look upon the man who advertised himself as a school trained statesman very much as the traveling man did upon a dignified professor who sat down beside him in a railroad car. After they had ridden in silence for some time, the sociable traveling man turned to the professor and asked him what line he carried. The professor answered with much dignity: "I carry brains;" to which the traveling man, after looking him over for a few moments, replied: "Well, you carry a d—— poor line of samples."

There seems to be no immediate prospect of the formation of any body of our citizens who will have the education, training, and practice in political and governmental affairs that the members of the legal profession have. There will be, of course, as there always have been, many and brilliant individual exceptions. I am purposely and of necessity speaking in general terms.

The standing of the Bar is high to-day, but as in all human affairs, there is room for improvement. Owing to the delinquencies of some, there is a lingering suspicion in the minds of too many people, that lawyers as a rule, are sly, cold, tricky, and avaricious. This suspicion on the part of many people is well expressed in a verse of doggerel which I read not long since. It does some violence to our language but illustrates my point and runs as follows:

A cautious look around he stole,
His bags of chink he chunk;
And many a wicked smile he smole,
And many a wink he wunk.

This has its amusing side and yet has its serious side, and this suspicion can be reduced only by each of us observing a high standard of individual conduct.

Next to this it is of the highest importance that the lawyer make himself in the parlance of the race track, a first rate individual performer. He should be careful to so prepare himself for his work that he may advise his clients correctly and definitely as to their rights. He cannot hope for a very large degree of influence unless he does so, and many lawyers suffer under charges of moral delinquency by reason of incompetency and carelessness.

The lawyer who lacks in moral principle and competency, is in very much the same position with the public as was the father with his son in a fashionable dining room. In connection with the dinner, the father had ordered white wines, champagne, or other such non-intoxicating(?) drinks, and during the course of the meal warned his son against the evils of intemperance and admonished him that he should never become intoxicated. The son asked him how one could tell whether he was drinking to excess. The father by way of illustration, pointed to a table in the corner of the room, and said: "Do you see those two men sitting at that corner table?" to which the son answered, "Yes;" and the father then said with an air of superior virtue and wisdom: "Now, if you could see four men there, you would be drinking to excess." The son looked long and intently at the table in question and finally turned to his father and said: "But father, there is only one man sitting at that table." If we are to escape such a predicament, we must avoid seeing double and confusion of thought, and practice scrupulously the high ethics of our profession.

There is, however, something more required than high moral character and thorough preparation if the lawyer is to be of great public service. He must in some dignified and legitimate way make himself interesting to the people of his community

and State, in order that he may become a leader for the higher things of life. The greatest objection which can be urged to our changed methods of selecting public officials, is the difficulty that we have in bringing men of real merit and ability before the people in such a way as to receive their suffrage. Such men usually have too fine a sense of propriety to indulge in personal advertising and are greatly handicapped in contests with men of mediocre ability and selfish purposes, who are constantly haunting newspaper offices, inspiring personal notices and advertisements and resorting to every device or trick, no matter how cheap or contemptible, to create a fictitious personal valuation of themselves in the mind of the public. Along with other exposures, we should have an exposure of the methods of these personal advertisers who are found in every corner of our land. If we are to secure the best results under our changed conditions, our profession should assist generously in producing and bringing to the front the best leadership which our citizenship affords.

With many and complex public problems pressing for solution, the promise for the lawyer depends entirely upon the manner in which he measures up to his responsibility and opportunity. If the highest hopes for our profession are to reach fruition, we must maintain a high moral tone, a high standard of excellence in our professional work, and enter earnestly into the social, industrial, and religious needs, hopes, and aspirations of the people among whom we live and are called upon to serve.

We should be ever ready to lend our influence and support to all needed and practicable changes which will benefit society and see to it that "in the corrupted currents of this world, offence's gilded hand may (not) shove by justice and that the wicked prize itself may (not) buy out the law." If we live up to these standards, we shall merit that respect and confidence which we shall most surely receive.

THE TOASTMASTER: Gentlemen, we have supplied the effete east with its brain and brawn, and some of the leading financiers and professional men in New York City are Iowa men, Iowa born. The same thing is true in Chicago. We recently dis-

covered another gentleman in Buffalo, N. Y. It seems he was born out here at Iowa City; I don't know how many years ago; a long while ago. He remained here long enough to take on a good physical constitution, and then he took the train, and said: "Put me off at Buffalo," and he has been there ever since. He has been returning to first principles, visiting his boyhood home. We discovered he was here for that purpose, and we said to him, come out and mingle with the Bar of Iowa.

I have the pleasure of introducing to you Honorable Simon Fleischmann, of Buffalo, N. Y.

RETURNING TO FIRST PRINCIPLES

Mr. Toastmaster and Fellow Members of the Bar:

In the early seventies there appeared before the Court of Appeals of New York, the highest court of the State, composed of distinguished Judges, including Martin Grover, a legal genius from the rural districts of the commonwealth, a young attorney who arose to argue his first case. Overcome by the importance and solemnity of the occasion, the budding Blackstone began his address something as follows: "For the first time in my legal career, I now have the honor to stand before this august tribunal, which holds in its hands the lives, property, freedom, and destinies of millions of freemen, and I assure this Honorable Court that I feel profoundly the responsibility resting upon me, and—." Judge Grover, who had stood, or withstood, this flight of oratory as long as he could, here broke in, and said to the youthful barrister: "Young man, I wish you would proceed with your second point." The attorney was naturally somewhat disconcerted, but rallied his forces and discussed the more salient features of his appeal, as best he could.

In appearing before this distinguished body of judges and lawyers, my feelings are akin to those of the young attorney, who was called down, or jogged on, by Judge Grover, and for various reasons and because of mingled emotions. In the first place, this is my first appearance before an Iowa tribunal, and I feel deeply the responsibility resting upon me, notwithstanding the definite warning which accompanied the kind invitation of your President, that I should not be expected, or allowed to

speaking more than twenty minutes. He must have heard of my propensity to talk until the court becomes exhausted, and wisely protected the Association, over which he presides, from discomfort, and himself from embarrassment. I may say, in this connection, that I am utterly opposed to the recall, not only of judges, but of speakers on occasions like this, and to avoid that humiliation, will keep an eye on the face of my watch as I proceed.

In the next place, in coming here to join you on this auspicious occasion, I return to my native State, having been born a Hawkeye, of which I shall always feel proud. I am reliably informed that I first saw the light of day in Iowa City, early in life, and that I was taken away from this State to the effete civilization of New York City, when I was less than four years of age. I assure you, that the process was one of duress, or at least ignorant acquiescence on my part, as I am reasonably certain, from my return visits to this State, the first of which I enjoyed last summer, and the last of which, I trust, this may not be, that, if I had known as much about the thrift, progress, attractiveness, and promise of this great State, when my parents removed me from it, I should never have consented to a change of domicile, but would have insisted on growing up with the country and spending my life here, where it began.

I can recall many interesting episodes which my father related to me after I grew up, about his residence in Iowa City. Among other things, and possibly to avoid any undue conceit on my part in having been born in Iowa City, my father told me that, at or about the time of this important event in my career, and possibly because thereof, the State Capital was, with reasonable promptness and entire completeness, removed from Iowa City, where it theretofore creditably existed, to Des Moines, where it has since remained undisturbed. However, I find and am consoled by the thought, that the intellectual center of this great State, represented by the University of Iowa, has at all times remained in Iowa City, and has grown and is increasing in beneficent influence, and that its central or administrative building remains the old original State House.

I was also gratified to learn, on my recent visit to Iowa City,

that my parents left worthy names and reputations in that community; and my removal from the State, at the early age at which I was deported, has made it practically impossible for me to imperil their memories, at least in Iowa City and its immediate vicinity. I have recently had an investigation made as to the precise building in which I was born. I find that my advent made so little impression on the community that there is considerable difference of opinion among the old settlers of Iowa City, as to the exact spot which served at the *locus in quo* of this episode. However, under all of the circumstances, and because of the reasonable certainty that I was born somewhere in Iowa City and certainly within the boundaries of the State of Iowa, I feel not unlike the Irish patriot, who once observed, "I love my native land, whether I was born there or not."

I do not wish, however, to pose as overmodest, since modesty, like other virtues, may run to the excess of affectation and insincerity. I therefore confess that I was much gratified to find that I was not unknown, even at this late day, on the extreme western border of Iowa. Evidence of this encouraging fact was afforded a few days ago, when I received a letter in Buffalo from one of the enterprising editors of a daily newspaper in Sioux City, stating that the editor in looking through his collection of photos found that my picture had been misplaced, and asking me to send another, which I cheerfully and eagerly did. It was a source of great satisfaction to me to find that my picture was in frequent use in the office of this journal and that as the result of its reiterated exhibition, presumably on the front page, it had, as might have happened with the picture of the President of the United States, or of the Governor of the State, or of Kaiser Wilhelm, been accidentally mislaid and that a duplicate was desired. Confidentially, however, I have some latent doubt whether the original will ever show up.

I am satisfied that, if I were speaking this evening in open court and had spoken as irrelevantly, and possibly, irreverently, as I have thus far, one of the members of the bench present would long since have suggested to me, as did Judge Grover to the young attorney, that I proceed with my second point, to-wit: the subject of my toast, which is entitled "Returning to First

Principles." I should urge in answer to any such interruption, if I were allowed to, that I have thus far been returning strictly to first principles in recalling and reciting "the story of my life," from its inception,—a subject of vast importance and interest, at least to me, however tiresome it may be to others. However, in a sense, I have no second point, but only two subdivisions of one point, like the Scotch parson, who had for his subject one Sunday, "The Prophets," and after talking an hour and announcing that he had reached the end of the first subdivision of his subject, viz: The Major Prophets, said that he would now proceed to consider, with equal fullness and detail, the second sub-division, viz: The Minor Prophets, and introduced this part of the sermon with the question, "At the outset, let me ask, what place shall we give to Malachi?" whereupon, a Scotchman in the back of the church audibly stated, "You can give him my place, for all I care; I am going home."

I desire, however, to utter a serious word under my topic of returning to first principles, as I should not feel satisfied to devote my entire toast to reminiscences and matters of personal concern. Lawyers should in these days of unrest take frequent inventory, so to speak, of what permanent legal assets we have left. One of our great predecessors, Rufus Choate, uttered an unconsciously prophetic truth, many years ago, when he stated to a friend who claimed he was breaking down in health that, when a man's constitution gives out, he can go on living for many years on the by-laws. It seems to me that, as a Nation, we are rapidly approaching a condition in which we are threatened with having to live on the by-laws and that, when these, in turn, give out, we shall have to give up the national life and health which we have thus far enjoyed.

The Constitutions of the United States and of the several States are becoming unpopular and are regarded by many as hindrances to the Nation's onward march of progress, and it is urged by many leaders of thought, self-constituted and otherwise constituted, that constitutional restraints, which, until recently, were thought necessary for the protection of the weak against the strong, should be abolished or promptly overridden by popular vote, some going so far as to advocate the summary recall of

judges, who, under oath to enforce constitutional law, interpret and enforce it as they see it, but, in a manner not pleasing to a contemporary majority of voters. While this position of many people in the community is quite recent in its definite and acute form, it is not entirely new. You have all heard of the enterprising politician who, years ago, on being told that a bill in which he was interested and wanted passed or approved, violated the Constitution, uttered the phrase which has become familiar in political jurisprudence, "What's the Constitution between friends?" This lightness of touch regarding the fundamental law is today dangerously prevalent, and, while I do not wish to be an alarmist, I see in this attitude of many people, a menace to our form of government, which I regard, fortunately still in common with many survivors of the old school, known as conservatives, as the best form of government yet devised, and indispensable, in the long run, for the preservation of our rights, liberties, and the security of our persons and property.

It seems to me vital that we return to first principles of constitutional law and restraint, and that we lawyers, especially, teach and impress them upon the lay members of the community, who have not the time, opportunity, nor mental training fully to appreciate the importance of maintaining firm legal foundations for our political superstructure. Hand in hand with the disrespect for constitutional law there has inevitably grown a corresponding disregard for the opinions of lawyers and judges on sociological, governmental, political, and even on legal questions. This was forcibly, but, to me, somewhat painfully illustrated, last September, when I was visiting friends in Ohio on the very day that the new, and as I would call it, in some respects, new-fangled Constitution of that State was being voted upon, and for the most part adopted, the principal plank rejected, being, paradoxically, that for women's suffrage. A day or two after this, I spoke to a distinguished surgeon of Ohio in regard to the matter, as the doctor had been a member of the Constitutional Convention which framed the new Constitution, and asked him how many delegates there were in this Constitutional Convention. He said there were in the neighborhood of four hundred. I then asked him how many of them were lawyers. He said, as I recall

it, about thirty, adding significantly and pointedly, "and that was enough." This, off-hand, will strike laymen and lawyers alike, as "a good one" on the lawyers; but it seems to me, that it also has a serious and ominous echo, implying, as it does, that a convention called to frame the fundamental law of a great community is better off without any lawyers, than with lawyers in its make-up. Furthermore, it assumes that the study of the law, the observation of its practice and administration, a knowledge of the experience of all ages in its application, which can only be acquired through patient labor and research, are worthless in the enactment of laws for the government of a great people, however necessary and indispensable they may be in every other science, art, or other sphere of human activity. This attitude of mind, towards the law, is in entire keeping with the prophetic suggestion of the statesman, already quoted. "What's the Constitution between friends?"

I am sure, lawyers are more reasonable and modest in their respect for the knowledge necessary for success in other pursuits than was the able surgeon who considered himself and his lay associates superior in ability to trained lawyers in framing the fundamental law of the land; for if one of us had broken a bone or were threatened with physical infection, as the body politic is with political blood poisoning, we should not have assumed to treat our own case, but have gone to this very doctor and placed ourselves under his care and followed his advice. I am the last one to claim that a legislative or constitutional body should be composed exclusively of lawyers, as the practical view and advice of successful laymen, business men, and others, are necessary and invaluable, both as a practical matter and as one of public policy in framing laws. On the other hand, it seems to me that it must be self-evident to any reasonable and cultivated mind, that a law-making body without the guidance of lawyers, or minds trained in the law, is a monstrosity, and that its output would cause inextricable confusion and disaster, from which there would soon be a reaction and a return to law-making bodies composed at least in part of lawyers. Even if such a non-legal body could, for a time, carry a community along, it would be because

its leaders surreptitiously consulted lawyers in the preparation of the laws which they introduced and had enacted.

It seems to me imperative that lawyers, both individually and collectively, in private and in public, enforce the necessity for returning to first principles. A witty lawyer of renown, of New York City, recently said of Theodore Roosevelt, of whom he is no admirer, that he deserved credit, at least for one thing, and that was for reviving the ten commandments; that people, though they had heard of the Decalogue in their youth, had grown a little rusty in its application, and that it was time that someone called attention to the continued existence of its behests, and that Theodore Roosevelt, with his keen eye for popular strokes, had come to the rescue at the psychological moment and owed much of his popularity to his espousal of this worthy cause.

Just at the present moment, no one will be able to win such fame for persuading or exhorting the people to go back to the Constitution of the United States, and to stand for its supremacy and sacredness. It is to be feared and regretted, that too many citizens and non-citizens, at present, feel about the Constitution as a man did about a certain familiar type of soup, when he said, "Ox-tail is going a good ways back for soup."

I should greatly enjoy going into this matter further, as it has caused me thought and worry, and show, among other things, how unnecessary, undesirable, and dangerous, as it seems to me, the various plans are that have been suggested for making the amendment or abrogating of Constitutions more easy and expeditious, or for attaining the same ends by recalling judges, or recalling or overruling judicial decisions by popular vote; but neither the time allotted me nor the essentially joyous character of this occasion, justify anything approaching ponderousness of discussion, with its resultant retarding effect on the digestive process. I desire, however, merely to recall, by way of illustrating the sufficiency of the method of amending the Federal Constitution, provided by that wonderful document itself, as originally drafted, that the Amendment which has just been promulgated as the law of the land, providing for the election of United States Senators by direct popular vote, instead of by legislative vote, became of force within about a year and a half

after it was first proposed in Congress; likewise, that the Amendment authorizing Congress to impose an income tax, became effective within a very short time after a prior act of Congress had been held unconstitutional by the Supreme Court of the United States. So, the first ten Amendments to the Federal Constitution were adopted within two years of its going into effect.

We have another interesting illustration in my adopted State of New York, where the Employers' Liability Law, known as the Ives Law, which was passed in 1910, and held unconstitutional in March, 1911, has resulted in a proposed Constitutional Amendment authorizing such an act, which will doubtless become effective on January 1st, 1914, within less than four years after the original law was passed, and less than three years after it was held unconstitutional. Prior to the passage of this law, in 1910, there was no particular demand for any such law in the State of New York, and its need and justification have grown out of very recent economic developments. It would seem clear that these recent Constitutional Amendments, enacted in compliance with public sentiment, have been effected with sufficient expedition, and that anything more rapid in constitutional evolution must be hazardous and not consistent with due deliberation. Besides all this, it is the opinion of able judges and lawyers that, under the Federal and State Constitutions as they have existed without amendment, proper, reasonable, and effective compensation acts can be enacted which will be constitutional and yet will accomplish all that is desired by and for workmen injured while in the employ of others, provided always, adequate legal skill, care, and foresight are exercised in the preparation of such laws, instead of having them simply scrambled together by noisy and untrained orators and agitators. Much of our hasty and unsound legislation, enacted at the behest of impatient leaders, recalls the condition of certain articles of food in a southern restaurant, in which a guest for breakfast said he would like poached eggs on toast, to which the waiter replied, "I don't believe that we have any eggs this morning that will stand poaching; but I can give you a nice scramble."

It has been a great pleasure for me, as well as a great honor to me, to be your guest and to join you in the proceedings and

festivities of this year's meeting of the Iowa State Bar Association. The occasion, involving as it has, my return to my native State, has awakened in me and will perpetuate deep emotions and happy memories. It has been observed that, in these days, a man should be careful in selecting his ancestors. I am glad to find on visiting my birth-place, that my precautions in this regard were ample and satisfactory. It is also a source of gratification to me that, in selecting the place, the State, and the Nation of my birth, I made no mistake, and that none of them could have been better chosen. In looking about me, this evening, and since I have been in Iowa, I find that all judges and lawyers look alike to me. They are, for the most part, intelligent, capable, conscientious, and trustworthy. Whether they come from Iowa or New York, or go to Iowa or New York, their purpose and ideals remain essentially the same. I know from my brief stay with you, that a New York lawyer, especially if he was born in Iowa, feels as much at home in Iowa as in New York, and I have no doubt that this would be the same if he had not had the honor and distinction of being a native of the Hawkeye State. You may rest assured that the Bar of the Empire State is no less hospitable or interested in the elevation of the profession to which we belong, than you are, and will accord each and all of you no less hearty a welcome than you have shown me, should you honor us with attendance upon any of our bar meetings. As a member of the Bar of the State of New York, I wish you continued prosperity in the great work of improving and elevating the law and its administration, and thereby, the general public welfare, in which all associations of lawyers are engaged.

I desire also again to thank you, most heartily, for giving me this opportunity of joining you in your deliberations and festivities, and in having thereby afforded me the additional profound pleasure and satisfaction of visiting my native State, in whose continued thrift, prosperity, and progress, I shall feel unabated interest and concern, so long as the life which was here begun shall last.

This ends my second and final point. May I hope for the pleasure of discussing a third with you at some future time?

THE TOASTMASTER: Here in the seclusion of this room we may confess among ourselves that there are two law making bodies, the courts and the legislature. Sometimes a lawyer becomes dissatisfied with the first body and he concludes to go down to the legislature and correct the mistakes of the court. Usually, however, after he gets through there, he is glad to come back to his first love and he does so a sadder, if not wiser man. Your own Senator, J. U. Sammis of Sioux City, knows something about "Law in the Making" which he will now tell us.

LAW IN THE MAKING

Mr. Toastmaster, and Gentlemen of the Bar:

An Irishman was once asked by a friend if he would have a drink of whiskey. Without replying, and, apparently, without having heard, he struck an "attitude" and gazed heavenward. After a moment's wait the friend said: "Pat, did you hear me?" "Yes," said Pat, "I heard yez, but I thought it was an angel spakin."

And so I felt, Mr. Toastmaster, when your committee invited me to participate in the exercises of this occasion. I certainly felt flattered, and regarded it as the greatest compliment of the kind I had ever received. For that matter it was too big, as I am ready to admit. That, however, was your committee's affair, and so without stopping to think, and before I could muster the cowardice to decline, I accepted. But as soon as I began to reflect, and to realize that the company in which I should find myself would be composed solely of distinguished men and orators, I was frightened at what I had done.

I felt like the farmer who was leading a yoke of steers by a rope. Having occasion to use both of his hands in opening a gate he tied the rope to one of his legs, whereupon the steers ran madly away, dragging the poor farmer over the stones and the bumps for about two miles. Finally some neighbors rescued him, and on the return of consciousness one of them said, "John, what made you do so foolish a trick?" and John replied, "Well, I realized my mistake before we had gone four rods." But, here I am, and the Toastmaster, after doing a few splendid stunts with it himself, has passed to me, like a football, the weighty

subject of "Law in the Making," and frightful as the responsibility is I feel that I must do something with it, and do it mighty quick.

It is not my purpose, however, to introduce an innovation into gatherings of this character by confining myself to a subject. It is well enough to have one, perhaps, as a point from which to start, but to undertake to return to it is a dangerous practice, and one that I shall not encourage.

"Law in the Making" may be approached from so many different angles that in its discussion one knows not where or how to begin. Whether the cloud "is backed like a weasel" or is "very like a whale" depends wholly upon the latitude from which you view it, and as I am somewhat uncertain as to my present latitude I am unable to accurately estimate the shape and character of my subject. I presume that in assigning this topic to me the committee temporarily deluded itself into thinking that because I had the honor of holding down a seat in the legislature during two sessions I must know something of how laws are made,—which only goes to show how easily some men, even the smartest of men, are fooled. Now, if I could have hoodwinked my constituents into so believing, the career of a budding and promising statesman would not have been so rudely and so suddenly terminated, but somehow they conceived the idea that if a man was incapable of learning all there is to be known of "Law in the Making" after serving an apprenticeship of four years, the place for him was at home, so at home I remained. Some day, of course, they will realize what a terrible mistake they made, but not, I fear, until it is forever too late to make amends.

There is one thing about "Law in the Making" that my brief experience taught me,—a thing that many good people fail to appreciate. It is, that laws are not really made by our legislative bodies. The members of these are simply the instrumentalities through which laws are formally enacted, but their real making is done outside of our legislative halls. We may not always realize that this is true, and especially is it difficult for legislators themselves to grasp and admit its significance, but it is the fact, nevertheless. I know that the popular notion is that the

men who are chosen to represent us at Washington or at Des Moines are the saviours who make the laws for our salvation, but the idea is largely erroneous. They will probably refuse to believe this statement, so I will add to it by saying that the real law-makers remain at home, while their representatives, like puppets, simply do their bidding. May the Lord have mercy on us when this ceases to be true, and I say this with fervor and understanding. Not that those who undertake to carry out the will of the people in the enactment of laws are venal, corrupt, or incompetent, but because it would be impossible, in any circumstances, to choose for this work men who, for and by themselves, are qualified to think and actually make laws for all the people. Some of them may, and unfortunately, some of them do, as soon as they receive their certificates of election, permit themselves to believe that the wisdom of a Solomon, as a law-maker, is theirs, and that the fate and destiny of their State and country are in their hands. They imagine that their election bears the stamp of the genius of statesmanship, and that they are the chosen ones, inspired by the Almighty to perform valorous and noble deeds for the saving and glory of mankind. They forget that genius is perspiration far more often than it is inspiration, and that while capability marks some men, and importance others, indispensability attaches to none.

However, the average legislator is a good and an honest man, bent upon doing the right, and as soon as his imaginary sense of importance is dissipated and he begins to realize who the real lawmakers are, he settles back into his harness and becomes a more or less useful animal, depending, of course, upon his ability to pull, and to work his team mates,—or work with them, rather. His highest point of efficiency is never reached, however, until he learns that the primary function of law is to prevent crime rather than to punish criminals, and that until this lesson is learned and this underlying principle is incorporated into our laws they will not be what they should be, falling far short of measuring up to the standard of enlightened statesmanship.

The greatest obstacle that is encountered by "Law in the Making" is found in the natural vanities and weaknesses of those men who are temporarily clothed with legislative authority.

Too often they disregard the wishes and interests of the people whom they represent, and trample upon their own moral convictions in order to gain a temporary political advantage, or to secure the plaudits of an unthinking gallery. If any of you think that there is not a considerable amount of "playing to the grand-stand," and of real hypocrisy, in every legislative body, something ought to be done to improve your eyesight,—you are afflicted with astigmatism in an aggravated form. It is unfortunately true that the desire to save one's own political hide, and to conserve one's selfish political fortunes, too often are the forces which determine a legislator's actions, and I presume that so long as men are human, ambitious, and weak, just so long will this condition exist. And, as a result, the American people have often reaped the whirlwind. Crime, assassination, and bloodshed have frequently followed as a result of selfish influences that have prompted or restrained legislation.

In our failure to effectually shut out citizens of other countries who sought refuge here from prosecution for plots and crimes that should have barred them, we have sown to the wind. We have mistakenly and weakly tolerated, if not nursed and encouraged, that depraved form of journalism which barter truth for falsehood, places a premium on lies, and caters to depravity. We have indulged free speech until it unhesitatingly and in bitterest terms assails personal character, official integrity, and national security. Unrestricted immigration, yellow journalism, and licensed assault, more than all other things combined, are the influences which affect "Law in the Making" and detrimentally shape the course of legislation. These, unfortunately, are the strongest of the many active influences which dictate the making of laws. Because of them, statutes which are essentially wrong in principle are enacted, and many proposed laws which are just and right are smothered and killed.

When all is done our legislators say that they meant well, and so they did, but that does little good. It is what doctors say when they see their mistakes go by in a hearse. Our earnest attention, my friends, ought first to be given to these real law-making powers that exist outside of our Congress and our legislatures. It is with them that "Law in the Making" has much in common,

and it is with them that the people ought promptly to deal. We must come to a realizing sense that Democracy without just laws, rigidly enforced, is a stupendous farce. If our politics is corrupt don't blame it all on the politicians and office-holders, but place the blame on those who vote them into power. The main source of political corruption lies deep in the carelessness and indifference of the multitude. If America perishes it will not be by violence from without, but by disease and degeneracy from within. "Universal suffrage without universal virtue is universal disorder." We need patriotism of a better brand than that which flourishes in so many places. We need a kind of patriotism which has as one of its constituent elements a deep-born love of honesty, because no patriotism is healthy which is not honest and intelligent as well as sentimental. Any man who is unwilling to give to every human being whatever right he claims for himself,—I care not what his position, his power, his culture, or his wealth, may be,—is a savage who has no place in the citizenship of a free Republic.

"Law in the Making," gentlemen, has its conception in the womb of public opinion. If this public opinion is cast in the crucible of honest and intelligent patriotism, good laws are certain to result, but if, on the other hand, it is moulded by selfish, dishonest, and unpatriotic men to serve their selfish and unpatriotic interests, the offspring is dishonor and disgrace. And the result is achieved quite as often by preventing the passage of good measures as by enacting bad ones. In fact, I believe this to be the more common and insidious method that is employed, and the more dangerous because of its easier accomplishment. Witness the workings of the Illinois legislature, which has just adjourned, and the single instance that I cite is illustrative of many. A bill was introduced in behalf of the liquor dealers which sought to create a vested financial interest in saloon licenses, and it was estimated that this measure, if it became a law, would put more than fifteen million dollars into the pockets of the distillers, brewers, and saloon keepers of that State, for which they would give no consideration. Another bill was introduced in the interest of good morals, whose effect would have been to drive saloons and disreputable road-houses from the residence

and near-by rural districts of Chicago. The liquor forces were not strong enough to pass their measure, but their organization was so effective that, with the aid of the Speaker of the House, they were able to prevent the other from being brought to a vote, and thus a good and righteous bill was defeated by an unholy alliance between greed and immorality.

In our national Congress similar scenes frequently have been witnessed, and the will of a majority of our law abiding citizens thwarted, even to the extent of undertaking to enact strictly class legislation. The President has reluctantly just approved a measure which was clearly designed to favor and exempt from legal penalties certain labor and farmer organizations. He so declared in giving his reasons for signing the bill and indicated that he would have withheld his approval if the wicked purposes of the law could not be legally circumvented. We all must know that this bill did not represent the conscientious belief of our members of Congress as to what is right, but indicates, simply, that outside political influences were brought to bear that were sufficiently strong to induce a large majority of them to close their eyes and yield to a clamor instead of standing firmly by one of the cardinal principles of free government. Thus "Law in the Making" was prostituted to the sordid purposes of practical politics, and in my humble judgment a blot was cast on the Congress of the United States that it will take long to obliterate.

But, fortunately, there is a better side to "Law in the Making" and a brighter view to take of it. The press of public opinion and the fast awakening conscience of a mighty people are bringing wonderful results. Not only are the material subjects of tariff and currency receiving attention, but the greater problems of social justice, employers' liability, and national and international arbitration are being rapidly pushed to the front and given serious consideration. The time must come when "Law in the Making" will no longer be dealt with along purely partisan lines; when those greater questions which affect our moral as well as our economic welfare will be settled according to what is right rather than according to what is politically expedient. It is then that a new era of prosperity and happiness will have dawned, and we shall be able to lift up our faces to heaven and

declare that, at last, there is government of, for, and by the people. For many years I have said, and I still firmly believe, that questions like the levying of tariff duties are nothing but great business propositions, and that they never can nor will be settled right so long as they are made the football of politics. Concentrate on their consideration the combined patriotic intelligence of all of our legislators and they soon will be permanently settled to the glory, and happiness, and material welfare of all concerned. When this is done, "Law in the Making" will have become a simple process and an easy and patriotic duty, coveted rather than shunned by the best and the ablest of men. When this is done wages and social justice will be considered in their proper relation to each other, without hysteria, cheap advertising, or effort to make political capital out of the disclosures of proper investigation, properly made; no discriminations will be made in favor of one city as against another city in the tolls that are charged for the use of a great canal that in its proper conception stands for universal peace and the right of the United States to a fair share of the world's trade; and the conservation of human resources and human life will be regarded as of greater importance than the saving of money.

Yes, then we shall know that not only have humanity and civilization laid claim to the waste places of the earth, but that new lands must be opened to American trade as well as to the trade of European countries, and as we look into the great and unknown future, surrounded as we shall be by conditions that bespeak the greatest era of prosperity and growth we have ever known, we shall see emblazoned in glowing letters across the canopy of heaven the words, "Unto you is given dominion and control of the trade and civilization of the world." We shall see our army so enlarged that it may with certainty suppress insurrection and repel invasion, and our navy made commensurate with our commercial and political importance,—yes, we shall see the sails of American ships whitening every sea, bearing to all the places and corners of the earth the seeds of a better civilization, and the products of American farms, American manufactures, and American genius and invention. And, greater than all beside, we shall have taught the world that America is a Nation the

secret of whose success rests in the fact that justice to man and honor to God have been her watchwords and her guides.

THE TOASTMASTER: There never has been any Mason and Dixon line in the jurisprudence of this country when the courts are interpreting and enforcing the common law. It is quite as common for the Iowa Court to cite the decisions of Alabama, as those of Ohio, or Pennsylvania. However, I noticed a decision the other day from the Supreme Court of Mississippi which we are not likely to follow. They decided down there that a razor is not a deadly weapon, that it is "an implement of the toilet." I heard of a colored man who said that he bought his razor "for social purposes," but I fancy that on occasion it might become a deadly weapon.

The Federal Courts, of course, are all in harmony. There isn't any controversy as to the law of the several circuits or districts in the United States Courts. I do not believe we can close this meeting without having a word or two from Judge Speer, who lives south of that much faded line.

JUDGE SPEER: *Mr. President and Brethren of the Iowa State Bar Association:* I do not know that I was ever more completely taken by surprise except once. I was an independent candidate for Congress against the Democratic nominee in the old district in which I live in Georgia. I had given a church bell to the Methodists in Raven County. I gave it purely for devotional purposes although there were those who thought I had sinister motives. They had no steeple so they put the bell under the church and they said even then they could hear it seven miles. When I went there they invited me to speak in the church. There was the great Chief Justice, Logan E. Bleakley, extended at full length on one of the benches, listening with apparent approval to all I said. When I concluded one man in the crowd, who I afterwards learned was his brother, exclaimed: "Is there no one here who desires to speak?" Whereupon that distinguished man walked up into the pulpit and proceeded to peel the hide off of me as thick as a sow's ear. Therefore, considering the lateness of the hour, permit me to adopt the glossary of an old pompous darkey. There were a lot of other darkeys trying to

ride an unbroken mule, and he pushed himself through the crowd and said: "Git out o' de way; lemme show you how to ride a mule." They gave him the leg, and just as soon as he struck the back of the vicious animal, he went up twenty feet in the air, and just as he struck the ground he said: "There, dat's de way to do it; when you see he's goin' to throw you, git off." Gentlemen, allow me to get off.

THE TOASTMASTER: Although it is very late, I do not feel that we can adjourn this meeting without toasting the oldest member of the Iowa bar, present at this meeting. A couple of crooks concluded to burglarize a house one evening, and having picked out the dwelling the main actor went inside. When he came out the man who was on watch said: "What did you get?" He replied: "The bloke who lives in there is a lawyer; I didn't get nothing." The watcher said: "Well, what did you lose?" Occasionally a man breaks loose from his profession, and by reason of his training as a lawyer or otherwise, he accumulates a fortune. I want to introduce to you to-night, leaving it to his option, to speak or not, a man who was admitted to the bar in Sioux City, six months before I was born; I refer to the Honorable Frederick M. Hubbell, of Des Moines.

MR. HUBBELL: *Gentlemen of the Bar of Iowa:* I wish I could make an entertaining speech. I will say, however, in a reminiscent mood, that I came up to Sioux City on the 13th of March, 1856, to take a claim, having been induced to do so by Samuel H. Casady, who then lived here, but was visiting his brother P. M. Casady, at Des Moines, for whom I was working at that time for \$100 per year and my board. I didn't think I was getting ahead fast enough and I was told that I could take a valuable claim up here, which I did, but being too young to preëempt it, I sent for my father to come out and preëempt it for me.

I obtained employment with Andrew Leach immediately upon arriving here, as clerk in the Receiver's office of the Land Office of the United States. We were then selling this land around here for \$1.25 per acre. The Government withdrew all this land from the market about the 1st of June, 1856, and I went into the Recorder's office and recorded deeds for awhile. At that time there

were two hotels in Sioux City, the names of which I do not now recall, but the "boys" called one of them the "Terrific" and the other the "Severe," and I lived at the "Severe."

My friend, T. Elwood Clark, who lived at Sargent's Bluffs, consented to run for Clerk of the District Court, and was elected in August, 1856, by forty majority, and he appointed me as his Deputy and I had all the emoluments. The best compensation I received for any kind of work was making out naturalization papers for a Frenchman or a German or some other foreigner. I got \$2.50 for that and it was what we called easy money. I lived along in that way through Mr. Clark's term of office, which expired about September 1st, 1858. Meanwhile, I had been reading Blackstone and other law books, and my friends knowing of this, suggested that I be admitted to the bar. Acting upon this suggestion, Omar Newman and N. C. Hudson were appointed a committee to examine and report as to my legal qualifications. Their findings seeming to be favorable, I was on the 24th day of April, 1858, admitted to the Bar of Woodbury County.

In 1859 I conceived the idea that Sioux County ought to be organized, and I prevailed on three other young fellows to go with me up into that county in December, 1859. We took with us a tent, some flour and beans, a stove, and a dressed hog, and crossed over the county line about one mile where we built a dug-out in the side of the hill near the Big Sioux River. I don't remember what kind of a roof we put on our dug-out, but at any rate we crawled in and lived there on bean soup and biscuit that winter. I wasn't a good cook, so the boys didn't let me do the cooking. They said my biscuits were only good for wolf bait, so I took to dish-washing and there was no complaint made of my work in that line.

The first election in Sioux County was held in that dug-out. W. H. Frame was elected County Judge, whose duties at that time were substantially the same as are now performed by the Board of Supervisors. Joseph Bell was elected Sheriff, Emerson L. Stone was elected Treasurer, and I was elected Clerk of the District Court, because I thought I knew something about that branch of the business. That election occurred, I should think, about the last of February, 1860. Not being satisfied with living

that way, as soon as warm weather came on we went up about five miles farther north and built a two-story, hewed-log house, and called the place Calliope, the county seat of Sioux County. The county offices were located in that building, all the business was transacted there, and the county officers all lived there, and that being the only settlement in the county, we four were the whole thing.

There was in Sioux County, I think, about 175,000 acres of entered land, and we got out the tax list, collected some taxes, and issued warrants for building bridges. Many of the corners of sections and half-sections having been lost or destroyed, we re-surveyed a considerable part of the county and issued county warrants to pay for our services.

I got tired of my employment up there and in May, 1861, withdrew and went down to Des Moines. At that time the county was in debt about \$3,000, evidenced by county warrants, my one-quarter share of same being \$750.00. I left this with Mr. Stone to collect and remit to me, but never got a cent on that claim.

One of the sources of my profit, which in those days was very meager, while I was Deputy Clerk of the Court in Woodbury County, was to buy county warrants. They were for sale at twenty-five cents on the dollar and sometimes I could buy one for twenty cents. I did not think they were worth par and that if I could buy them at twenty cents and sell them at fifty cents to persons who could use the warrants in paying their taxes, I was doing very well.

Now, gentlemen, this is just a little history. I have not at this time met a man in Sioux City who was here when I was, back in the early days. I thought today I would go up to Sioux County and see where the county had been settled, and I did. It looked natural and I could locate the place where we built the dug-out, I also located the place where we built the county seat, the two-story, hewed-log house. I found a woman, a Mrs. Tibbles, who said she had occupied that building for two years, commencing about 1872, but that building was destroyed long since, and there is no sign of it left.

Gentlemen, I do not think of anything else, and I thank you if you will excuse me.

FRIDAY FORENOON SESSION

9:30 O'CLOCK A. M.

THE PRESIDENT: The Association will come to order. The new Executive Committee will meet during the hour for luncheon, it being the duty of this committee to select the time and place for holding the next meeting. The Nominating Committee will also meet and be ready for their report at the beginning of the afternoon session.

Are there any further resolutions, motions, or petitions to come before us this morning?

THE SECRETARY: I have here a recommendation with reference to an appropriation to help in the work of the Committee on Uniform Laws which was handed to me by Mr. N. D. Ely, which is as follows:

"WHEREAS, the important work of the Conference of Commissioners on Uniform State Laws is carried on by said commissioners paying their own expenses and without compensation and

"WHEREAS, expenses of printing, stenographers, and obtaining and circulating information are heavy and are met solely by contributions of some State legislatures or bar associations or by individuals,

"Therefore, be it Resolved by the Iowa State Bar Association that the sum of One Hundred Dollars (\$100) be appropriated from the funds of this Association to be sent to said commission to be used by it in furtherance of its work, and the treasurer is hereby directed to draw a warrant for said sum and forward the same to the Treasurer of said Commission."

THE PRESIDENT: You have heard the resolution, what will you do with it?

Upon motion duly made the resolution was adopted.

MR. O. P. MYERS: I desire to offer a resolution in regard to the appointment of a committee of five, to report next year in regard

to some plan or system of land titles, in order to simplify and make less expensive our transfer of land titles. It is as follows:

“Resolved, that a special committee of five members be appointed by the Chair, to report at the next annual meeting upon the Torrens Land System, or other similar systems as to land titles, in order to simplify and make less expensive the transfer of land titles.”

I move the adoption of the resolution.

The motion was duly carried.

THE PRESIDENT: The first paper this morning is to be read by Mr. F. F. Faville, upon the subject, “Criticising the Courts.”

CRITICISING THE COURTS

Whatever may be the cause, there is no denying the fact, that there has been an economic and political unrest throughout the entire country for the past few years. It has not been confined to the strife and enthusiasm attendant upon political campaigns. It is infinitely deeper and more far-reaching than this. It has permeated the entire body politic. Every man feels, or at least seems to feel as if *something* was wrong somewhere. That “the times are out of joint” seems to be conceded to a certain degree on all sides. It is generally admitted, or rather assumed, that “something is rotten in the state of Denmark,” but there is by no means an unanimity of opinion as to the precise character or location of the alleged putrefaction.

We are enjoying an era of unprecedented and Nation-wide prosperity. Our wealth is increasing by the millions at each striking of the hour. Labor finds ready employment, with shortened hours and an increased wage. Capital has abundant opportunity for investment with ample returns. We are at peace with all the world. But notwithstanding these conditions, we are living in an era of criticism and condemnation. We have become a nation of Iconoclasts and Critics. The low standards of our political campaigns have contributed their full share to produce this condition. We boast much of the “freedom of the press,” but all too often this privilege is prostituted into an exercise of

vicious and unwarranted attacks upon men and their motives. The demagogue and the charlatan have not been slow to endeavor to profit by adding fuel to the flame of criticism.

It is not surprising, under these general conditions, with which we all are familiar, that there should have developed a criticism of the courts of the country of a character and to an extent never before known in the Nation. There is no need for us to shut our eyes to the situation. We shall not help the conditions any by ignoring the critics or the criticisms. The plain unvarnished truth is that the courts of the country, the members of the profession of law, and the methods of the administration of justice, are "under fire." We, as lawyers, can neither ignore the situation nor evade it. We have a duty in the matter not only as members of our profession, as officers of the courts, but as patriotic citizens as well.

If our courts are subject to criticism, we shall be of small service, either to them or to ourselves, by failing to meet that criticism frankly and candidly. That judges are sometimes incompetent, or dishonest, is undoubtedly true. That some provisions of the law, especially in methods of procedure, are archaic, cumbersome and unsatisfactory, must be conceded. But that the flagrant and wholesale attacks that have been made generally upon the courts and the administration of the law, are unwarranted, false and vicious, every lawyer knows.

Much of the honest criticism of the courts and of the law has come from judges and lawyers of high standing, who have been actuated by an honest and sincere desire to further needed reforms. The great difficulty has been that at once these criticisms have been seized upon and warped, garbled and exaggerated and made the basis of the most unwarranted and unjustifiable attacks on the courts. Let me illustrate by a fair sample of a vast amount of this kind of criticism.

No man of common sense and sober judgment will question for one moment, that Ex-President Taft is a firm believer in maintaining the integrity of the courts of this country. But because this eminent jurist and lawyer has criticised some features of the administration of law in the United States, his statements made in the utmost good faith, to assist in needed reform, have been

used *not to help secure* the needed reform, but rather tortured and twisted into interpretations he never dreamed of, and are used as the basis for wholesale attacks against the law and against the courts that administer it. Upon one occasion, the ex-president said, "One reason for the delay in the lower courts is the disposition of judges to wait an undue length of time in the writing of their opinions and judgments. I know, for I have been a sinner in that regard myself. In English courts the ordinary practice is for the judge to deliver judgment immediately upon the close of the argument, and this is the practice which ought to be enforced here."

It could scarcely be claimed that such a criticism, coming from such a source, would be deemed to be "inflammatory." It was a criticism and a suggestion of a remedy by an eminent authority, honestly given for the commendable purpose of assisting in a needed reform in the administration of the law. It was entitled to honest consideration. But how was it used? One of the leading periodicals of the country paraded it under startling headlines in an article on the "Law's Delay." In this article, among other things, the author, referring to the delay in the courts, said, "It is my personal opinion that no crazy bomb-thrower who ever landed on these shores has ever done a tenth part of the harm to American institutions, which this judicial anarchism, in its innumerable manifestations, has worked to render justice a thing of jest and contempt." This is but a fair sample of a flood of similar articles that have appeared in prominent periodicals throughout the country.

Have you men of the Bar discovered that the administration of the law is "anarchism" ten times more dangerous than that of any crazy bomb-thrower? Please remember that these are not the "mouthings" of some street-corner agitator. They are the declarations of one of the greatest periodicals of the country, that is read by millions of intelligent American citizens, and the author is at least endeavoring to convey to the reader who is not careful to discriminate, that Ex-President Taft thinks that the administration of the law is in this deplorable condition.

Again, a United States Judge, in a distant State disgraces himself and his high office by his personal habits; while another, at

the Nation's Capital, prostitutes his position to his personal gain. Immediately a perfect torrent of criticism and denunciation breaks loose, which is directed, not against the offenders alone, but against all courts, and the law in general. The entire system of jurisprudence, the practice of law, and judges and lawyers alike are ruthlessly and relentlessly attacked. It is a golden opportunity for the demagogue who is seeking to further his own ends by dramatic appeals to those who are eager to be told that they are being abused in some way that they do not understand.

Not many months ago, one of the great weeklies of the country declared, "We have in the United States, at least five times as many judges as there is any necessity for, *and the chief occupation of these judges is the obstruction of justice.*" How long since did "the chief occupation of the judges of this country become the obstruction of justice"? When was it first ascertained that the rights of the people would be promoted and litigation would be facilitated if we only had one-fifth as many judges? These are not the denunciations of an anarchist. They are the statements of a great paper, supposed to be soberly dealing with a great and important public question.

Another form of attack grows out of decisions that are unpopular. A Supreme Court recently declared a law to be unconstitutional. The public thought the law desirable and wanted it upheld. A series of articles followed in a great journal containing such statements as the following: "Sometimes I am inclined to paraphrase Dr. Johnson's bitter sentence and say of our beloved Constitution that it is the last refuge of the scoundrel. It certainly is the *safe* refuge of the corporation and the rich litigant." And no less a personage than a candidate for the Presidency of the United States refers to the "type of mind" possessed by the Supreme Court of the United States in declaring a statute unconstitutional, as being "fossilized."

Scores of articles of like import have appeared in the public press all over the country, denouncing the courts, the lawyers and the law. A man is accused of a crime. The public believe him to be guilty, and desire that his punishment be summary and severe. He is tried and duly convicted. He prosecutes his case to the Supreme Court. The law which the people have themselves

made, provides the time in which that appeal shall be prosecuted. Frequently there is much impatience that any delay is occasioned by an appeal, and all this blame is often laid at the door of the court that as yet has not even acquired jurisdiction of the case. Then, if the court reverses the case on what are commonly regarded as "technical grounds," the criticisms and denunciations are bitter and extreme. That the real fault lay in the law itself, that the court had no discretion whatever under the circumstances, is of no moment whatever. The man whom the public condemned, even without hearing the evidence, has been granted a new trial by the Supreme Court. That is enough for the critics. "The court is corrupt." "The law is a farce."

A very prominent and popular periodical recently declared, "The law, as administered in this country by the Courts, is rarely a broad consideration of the merits of the case, but rather an endless citation of precedents and former judgments. . . . The law in an appalling number of cases, is simply a question of which side has the larger retainer fees."

Again no discrimination is made as to the real party at fault. The critics simply jump at conclusions. A man was tried some time ago on a criminal charge. The judge was honest and impartial. The prosecution was ably and vigorously conducted. The defendant's counsel were zealous and industrious. But the *jury* did not agree. Instantly a tirade of abuse was turned loose against the courts and the law itself, and a newspaper that assumes to be the guardian of the morals of the community declared, "It is time all the law books were burned, lawyers locked up, and Justice given a chance to gain a foothold." And this, too, from an editor who never attended the trial and knew nothing of the facts of the case. It matters not that the entire blame, if such there be, rests with the jury. The criticism is lodged against the courts and the lawyers.

I have made these few scattering quotations, almost at random, from the vast amount of criticism that has flooded the entire country, merely to bring before you a few illustrations to show the character of the criticisms that have been made and with which we are all familiar, and to point out, if I may, the particular things that really are at the basis of these attacks on the

courts. It needs no argument before this assemblage of lawyers, nor should it to any thinking man, to demonstrate that the general tone and character of these wholesale attacks upon the courts and the law and lawyers are unjust, unfair, and unwarranted. The profession of the law and its administration by the courts of this country needs no defense before this body of men familiar with the facts. That the courts have been, and are, the guardians of the lives and property of all the citizens of the Republic is known to every man of sanity and sobriety. That they have been singularly free from corruption should be a source of pride to every good citizen in the land. That, as a rule, judges are capable, honest and impartial, is evidenced by the exceedingly rare instances in which one is otherwise.

That the members of the Bar are loyal to their profession and conscientious in the performance of their complex duties is proven by the fact that to no other class are entrusted so completely, not only the property rights, but the domestic happiness and often the lives and liberties of their clients; and with rare exception is that confidence betrayed. The Bench and the Bar are entitled to a fair and honest defense against the fulminations of demagogues and the diatribes of irresponsible malcontents. That there are needed reforms in legal procedure lawyers generally will admit. That some of the criticisms of the courts are just, lawyers will concede. But what I am protesting against is the wholesale and irresponsible criticism of the courts, without just foundation, and which not only tends to bring our whole judicial system into unmerited disfavor, but very seriously handicaps, rather than helps, all efforts at substantial and genuine remedy.

In the first place, the courts are in no way responsible for many of the things for which they are criticised, and have no power whatever to remedy them. For example, the delay in the decision of criminal cases is almost wholly beyond the power of the courts. When the statute fixes the time in which an appeal may be taken, our courts have been unable to discover any plan by which that time can be hastened, no matter how "insistent" the public may be that it be done. The courts and the lawyers ought not to be held responsible for defects in legal procedure, which a legislature lacks either the ability or the inclination, or both, to

remedy. And yet, the honest truth is that the genuine reforms that have been made in the administration of the law throughout the country have been the result of the efforts of the lawyers, acting individually and by associations, far more than from all other causes combined. And this too, despite the misconstructions that have been placed upon their efforts.

Eliminating the "glittering generalities" and the expletives as well, there seems to be, in the last analysis, five general classes into which the criticisms of the courts are apparently subject to being divided. First, there is the criticism of the personnel of the courts.

It is insisted that "big business" and "professional politicians" have too much to do with the selection of judges, and that some judges are incompetent and some corrupt. That there is basis for some of the criticism in some quarters is undoubtedly true, but that under the generally prevailing conditions, the American people secure judges of as high character and as much ability as they do is remarkable indeed. As a matter of fact, neither "big business" nor "politics," as we use the terms, should have any voice whatever in the selection of judges.

Our people too much mistake the duties of a judge. Because he is said to hold "an office," because we have made that office a part of our political system, we have placed the judiciary too much on the level of other officers. A judge has no "policy" to uphold or advance as has an executive. He has no "platform" upon which he is supposed to be "running," as has a legislator. His duty is to hold the scales of justice even between the government and the citizen—between rich and poor—between the strong and the weak, and to administer the law, not necessarily as he would have it, but as he finds others have made it and to administer it impartially and fearlessly. The very character of the office should remove it as far as possible from any influence of partisan politics. Why should the better lawyer, the man better fitted for the judicial position, be defeated, as is often the case, because his views on the tariff differ from those of his opponent? Or why should there even be any acquaintanceship between a candidacy for the judiciary and a political campaign fund?

An examination of the criticisms of the judiciary will disclose

that almost without exception the definite criticism has been that the particular judge was incompetent *and* "had been selected by some political bargain," or that he was corrupt *and* had "gotten into office by improper 'political influence'." In other words, "politics" and nothing else is responsible for the conditions which have brought about the criticism of the personnel of the courts.

One remedy that has been proposed is to continue to select judges by the methods known to partisan politics, and then if the result proves unsatisfactory, let the incumbent's enemies join with his political opponents and recall him. I do not intend to enter into any extended discussion of the merits or defects of the Recall of Judges. We probably have all formed our own opinions on the subject. It is to be regretted that the question has become in any way embroiled in politics, but for myself alone, I do not believe for one moment, that the judiciary of the country will be "purified" in any degree whatever, by placing every judge where his tenure of office will depend upon his ability to decide cases so as to conform to the wishes or inclinations, or perchance the whims of a constituency. We shall gain little in bidding for impartiality and fearlessness, when we place our judges where they must feel that their position depends upon their ability to render decisions that will meet with the approval of political bosses or be ratified at a popular election.

In my judgment, the recall of judges commences at the wrong end of the proposition entirely. If "politics" has caused the difficulty, let us lay the ax at the root of the tree. Let us begin with the selection of our judges, and the American people will not be anxious about recalling them. The first and most important step in this reform is to make our judiciary non-partisan.

We of Iowa are certainly to be congratulated, that in this Commonwealth, where we have always had a judiciary of such high character, and where there is so little need for reform, we have made this most important advance toward placing and maintaining the judiciary on the high level it should occupy. Having done this, instead of making the tenure of office of a judge depend on his being subject to recall at any time, we should do quite the opposite thing and extend the tenure of the office, so that a

man could accept a judgeship without having always before his eyes the fear that the mere turn of a political wheel may in a very few years return him to private life. And not only should we do that, but we should, in many instances, increase the salary. I am saying this not in the interests of the judges, but in the interests of the people, who are complaining about the judges. The people can hardly expect lawyers of experience and ability, with an established business and an assured income, to put these aside in order to spend a few uncertain years on the Bench at a meagre salary. It is only because men have appreciated the honor of the judiciary and valued the experience on the Bench more than the financial returns that we have been able to secure as good judges as we have. Let us take the judiciary out of politics, entirely,—let us fix the term of office and the salary so that the best lawyers can afford to take the position without too great a sacrifice, and we will have taken a very long step in the work of “reforming” the courts.

The second and most common criticism of the courts is in regard to the delay in the administration of the law. This is not new. Hamlet enumerated “the law’s delay” among the “ills” which we would rather bear than “fly to others that we know not of,” and a modern critic brands this as “the worst form of anarchism.” Some of the criticism is just, much of it is unwarranted. Numerous concrete instances where delays have appeared to work a hardship to litigants have been cited in a series of articles in a great publication, as proving conclusively the inefficiency and even the iniquity of the courts, but no one has seen fit to catalogue the cases in which the “law’s delay” has been the very means of defeating improper litigation. Not all delays are unreasonable or undesirable. The very fact that the process of the courts is slow, is thorough, is sifting, deters many a man from rushing into ill-advised litigation. The man who is determined to “have the law” on his adversary, would frequently find himself engaged in a disastrous undertaking if he were able to precipitate a lawsuit on the instant. How frequently has an attorney seen the “delay” until a session of court could arrive, serve as the “cooling time” that averted acrimonious litigation.

Frequently the complaints of delay are just. Frequently the

remedy is simple. There is no good reason, except sudden, severe, and prolonged sickness, why any judge should keep a motion for a new trial under advisement for months, or even years, before deciding it. And the equity case is rare indeed that, after submission, requires month after month of "meditation" before a conclusion is announced. As a rule, such prolonged periods of consideration, "under advisement," do not tend to the illumination of the judicial mind, or to enhance the value of the belated decision. There is a suspicion abroad among the Bar that such delays are not always caused by the strenuous labors of the jurist who is wrestling with the problems presented. The genial philosopher, Mr. Dooley, said to his friend Hennessey, you will remember—"If I had me job to pick out, I'd be a judge. I've looked over a' the ithers an' that's th' only wan that suits. I have th' judicyal timperament—I hate wurruk."

On the other hand, much time of the courts could be saved if the court had the power to limit arguments to the jury in all cases, civil and criminal. No one finds any fault with the limitations in the Federal Courts, where as a rule, the cases are of great importance. With the single exception of North Carolina, our State is the only one in the Union, so far as I have been able to learn, that prohibits the court from limiting the time of counsel in argument to the jury. As every lawyer knows, a vast amount of time is frequently wasted in the selection of jurors. When between four and five thousand men are examined and months of time are consumed and costs mount into the thousands of dollars in the selection of a jury in a criminal case, as recently happened, it is not to be wondered at that the public complain.

It is reported that in the trial of the English murderer, Dr. Crippen, there were but three challenges to jurors, and the entire time consumed in selecting a jury was eight minutes and yet the whole story of the case had filled the newspapers of two continents for weeks. There is room for improvement in this respect. In these days of telephones and daily papers, it does not necessarily follow that because a man of honesty and integrity has heard or read of a case, and has been possessed of sufficient brain capacity to "form an opinion" that he is incapable of rendering a just decision as a juror.

If a palpable error in over-ruling a challenge was not waived unless all peremptory challenges were exhausted, it would remove the temptation to take all the time necessary to exercise all the challenges in order to "preserve the record." Furthermore, the number of peremptory challenges allowed could be decreased without any serious danger to the rights of litigants. If a man on trial for an indictable misdemeanor for which he may be punished by a fine of \$500.00 and imprisonment for a year in the county jail is fully protected by being allowed only three peremptory challenges, can any good reason be given why a man with a law suit involving only \$25.00 or less should be entitled to five such challenges? These are matters that might be considered by a legislature in the attempt to expedite proceedings in the courts, and in which the courts and attorneys could cooperate.

The delay incident to appeals is frequently the cause of criticism of the courts. Here in Iowa, our statute provides for the prosecution of appeals with as much expedition as can reasonably be expected. It ought to be remembered that a shorthand reporter can not produce a transcript of several hundred or thousand pages instantan, even if he had nothing else to do; and if an attorney had only one case to occupy his time, he could not prepare a long abstract and an argument "on sight." Those who complain of appeals know little about what is involved in the matter. If the time for taking and presenting an appeal were materially shortened, these same critics would be protesting about "undue haste" and "poorly considered cases." They are of the same stripe as the critic who insists that there are too many appeals and that the number should be reduced, and the moment the appealable limit is increased proceeds to protest that the Supreme Court is only for the "rich corporation," and that "the poor man has as much right to have his case reviewed by the Supreme Court, as the rich man." The best that can be done is to have a reasonable amount fixed as the basis for an appeal, and provide for a reasonable time in which an appeal shall be prosecuted. So far as our State is concerned, there is little cause for just criticism in this regard, under present conditions.

Another and most common criticism arises because of what is commonly called "judge-made law." The average layman knows

but little of the rules of evidence, and he does not readily understand how a judge can have the "right" to sustain objections and prevent a witness from telling his whole story. And for a court to direct a verdict is, to many minds, conclusive evidence of absolute despotism. It is hard for the ordinary litigant and his friends to realize that in his particular case, which is vital to him, the court is only applying the stable rules of the law which must be adhered to in all cases.

Bitter complaint is made because the courts are said not to give a "broad consideration" to the individual case on trial, but follow "an endless citation of precedents and former judgments." These criticisms overlook the very essential foundation of all law—and that is that it shall be stable and permanent, and shall apply equally and evenhandedly to all. A "broad consideration" of each individual case, without regard to established rules, and "precedents and former judgments," would lead swiftly to complete uncertainty and to chaos.

Every lawyer knows that certainty and stability in the law are only to be preserved by adhering to the established landmarks. This does not mean that there shall be no progress in the law. It may well be argued that under present industrial conditions, the fellow servant rule, the rule of assumption of risk, and the rule of contributory negligence, as originally laid down, need to be modified in order to do full justice. But if so, the remedy by legislation, as has been proven by the Employers Liability Act and the Workingmen's Compensation Law, can be easily secured and the new laws established uniformly and permanently.

Another form of criticism of the courts is because of decisions reversing cases, especially criminal cases, on so-called "technical grounds." It has always been one of the inalienable rights of the American citizen to raise a voice of protest when the Supreme Court reverses a criminal case. This is always true, but especially so when the reversal is for some reason that the public considers "technical." Nor is the criticism lessened any by consideration of the fact that the "taxpayers" will have to pay the costs. That some such criticisms are just, we do not need to deny. That appellate courts are fallible and "prone to err," most of us who practice law, will at times at least, be quite willing to admit.

One great difficulty in regard to this kind of criticism is that the average layman, who indulges in it, is not clear as to what is a "technical" ground. Should a conviction be allowed to stand where wholly improper testimony is admitted? Should a man be punished where conviction follows an erroneous instruction on a vital question? An eminent member of the Supreme Court of Iowa once very truly said:

It is the most ancient and sacred principle of our law that no person shall be legally branded a felon or suffer forfeiture of life or liberty except upon the most cogent and convincing proof. No matter how grave the charge, nor how strong the suspicion under which he rests, he is entitled to go into court unburdened with any presumption of guilt, and to have every element of the alleged crime established by evidence beyond a reasonable doubt before a verdict of guilty can be justly pronounced against him. Indeed, the graver the charge, the stronger the suspicion, the more insistent the popular demand for conviction, the more careful should be the courts to see that these essential safeguards of human rights are preserved unbroken. . . . The importance of detecting crime and punishing criminals is not to be overlooked, but it is of no less importance that no person shall be convicted or punished upon anything less than the full measure of proof required by the established rules of law.

Such not only is, but ought to be the law.

It has been quite strenuously advocated that all rights to appeal should be abolished in criminal cases. For one, I think that life and liberty are quite as important yet as property rights, and that it is quite as much the duty of the courts, *nisi prius*, and appellate, to safeguard the one according to law as to protect the other. I am not yet in favor of providing that the rulings of a trial court in a case involving \$100.00 can be reviewed by the Supreme Court, but that those made in a murder case are final. I have never yet discovered that the judge who made reversible errors in trying a civil case became suddenly infallible when he picked up the criminal docket.

Again it has been proposed to provide by statute that no case shall be reversed on any grounds that do not affect the substantial rights of the parties. Our Supreme Court, in a criminal case, recently declared, "It is our duty under the statute to decide the case without regard to technical errors which do not affect the substantial rights of the parties." One great difficulty is to

always be certain that a confessedly legal error did not affect the "substantial rights" of the parties. Even the critics would have some difficulty in agreeing among themselves in regard to this. If a matter is clearly erroneous why is it not presumed to be prejudicial? Who shall say that it does not affect "a substantial right"? It seems hard for the critically-disposed layman to fully understand that the rules of law cannot be switched to cater to the popular notion in each particular case. The hardened criminal, whom a community are anxious to see summarily punished, must be tried by the same rules of law as the popular citizen whom the public desire to have speedily exonerated. The court that deliberately attempts to evade the essential and established rules of the law in the belief that such evasion will please the public, is the enemy rather than the friend of the people, and is helping to destroy the very foundation upon which must rest the stability of our institutions.

We are breaking away from old technicalities and forms, we are liberalizing our procedure with a view to securing "ultimate justice" in every case. We should continue to progress in this respect. We should aim to fully protect the rights of the citizen and at the same time adequately punish crime. We of the Bench and Bar can and should help in securing better laws in this regard, but we shall fall far short of our duty as lawyers, if to avoid the comments of the critics, we in any degree countenance or cater to a violation of the established principles of the law. The reform must come by, through and under the law, not by its evasion or perversion.

Another general class of criticisms of the courts has been because of decisions declaring statutes to be unconstitutional. According to some of the critics, one would suppose that practically every statute passed by the law-making body that was peculiarly in the "interests of the people," was promptly declared to be unconstitutional by the courts. Possibly no other form of criticism has been so bitter or so unreasonable as this one. Many a demagogue has encouraged it who knew better. Many a man has joined in it honestly and sincerely, with good motives. The general character of the complaint is voiced by an author in a great journal when he said, "From the very begin-

ning of the Republic it has simply been one long struggle against the usurpation by the courts of rights which they never possessed and were never intended to have." Many honest people believe such a statement to be true, and that somewhere and somehow this "long struggle" in their behalf and against the "usurpation" of their rights by the courts has been steadily progressing.

It is very unfortunate that this criticism should, in any way, be involved in partisan politics. But whatever may be our political views and however sincere or enthusiastic we may be in regard to them, it is well for us to remember that the members of this Association are lawyers before we are politicians and that we are patriots before we are partisans.

In the first place, the so-called "usurpation" is grossly exaggerated. The function of the courts in this regard has been set forth so clearly by our Supreme Court that I take the liberty to quote :

To speak accurately, the constitutionality of an act is not dependent upon an affirmative holding to that effect by the court. It is the province of the court only to determine whether a legislative act in question is or is not 'clearly, plainly, and palpably' unconstitutional. The legislative and executive departments of government are under the same responsibility to observe and protect the Constitution as is the judicial department. This responsibility is always present in the enactment by the legislature, and approval by the executive, of all legislation. The constitutionality of all proposed legislation must be determined in the first instance by such co-ordinate branches of the government. Within the zone of doubt and fair debate such determination is necessarily conclusive. For the court to enter that zone would of itself be an offense against the Constitution. But when a legislative act is clearly and unmistakably unconstitutional, then the court must so declare. By common consent such a declaration is not deemed as usurpation by the court, but as a protest against usurpation already done. In such a case the court furnishes the only means of authoritative protest possible to the body politic.

It is however proposed that the courts should be directly prohibited by law from passing on the constitutionality of any statute. It is but an indirect way of proposing to do away with the Constitution itself, for of what value is a Constitution if there is no power resting with any authority to enforce it? Those who advocate such a plan have little comprehension of the real

principles of our form of government. It is well for us to sometimes recall the words of Chief Justice Marshall in *Marbury vs. Madison* :

The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

Again, others would not directly abolish the Constitution, but would have the courts ignore it, or else have their decisions reviewed at a popular election, or in other words, if the legislature passes a law that is clearly in violation of the Constitution and the court so declares, it is proposed to have that decision submitted to an election, and over-ride the decision and Constitution both by the verdict of a town meeting. Those who advocate this plan mistake the proper function of a court. The chief advocate of this proposition has explained it by saying, "I hold that if a majority of the people, after due deliberation, decide to champion [certain] *social and economic reforms*, they have the right to see them enacted into law and become a part of our settled governmental policy." And this Constitution or no Constitution. The same critic has referred to a decision of a Supreme Court declaring a statute unconstitutional, as being "intolerable and based on a wrong *political philosophy*."

We shall fall in sorry times indeed, if the time ever comes when courts are to decide cases solely according to their views of the desirability of proposed "social and economic reforms," or

according to the particular "political philosophy" in which they may happen to believe.

That eminent lawyer, Elihu Root, has well said,

It is not the duty of our courts to be leaders in reform or to espouse or to enforce economic or social theories, or except within very narrow limits, to readjust laws to new social conditions. . . . The judge is always confined within the narrow limits of reasonable interpretation. It is not his function or within his power to enlarge or improve or change the law. His duty is to maintain it, to enforce it, whether it be good or bad, wise or foolish, accordant with sound or unsound economic policy.

We shall not hasten needed "social and economic reforms," no matter how desirable they may be, by attacking the courts, or by overriding the fundamental law of the land, and having an election to uphold the Constitution one day and to repudiate it the next.

Gentlemen of the Association, we cannot expect all the criticisms of the courts to cease. We can not expect all desired reforms to come instantly. The process of reform is necessarily slow. But it will not be promoted by vituperation and calumny. It must be worked out fearlessly, patiently, by those who believe in the integrity of the courts. Upon the shoulders of the Bar must rest in large measure the duty of solving the various problems involved in the criticisms of the courts. We must do our full share to eradicate the evils that exist, and to promote the reforms that are needed. A great responsibility rests upon us, a great opportunity is ours. Despite the forebodings of Pessimist and Misanthrope; despite the denunciations of Iconoclast and Critic, the courts of this country will not fail in their great duty to conscientiously and faithfully protect and preserve the rights of all the people. May we do our part tolerantly, intelligently, patriotically, to uphold their honor, to promote their efficiency, and to preserve their integrity.

THE VICE-PRESIDENT: We will now listen to the Annual Address by the President, Justice Horace E. Deemer, entitled "Representative Government."

REPRESENTATIVE GOVERNMENT

There is no denying the fact that this is a time of social unrest, of criticism, and of change. This is true not only here at home,

but everywhere. The mechanism of government is being tested as never before and the spirit of democracy is rife in every clime. Heretofore we have boasted of our magnificent form of government and there has been a sort of blind Constitution worship, a veneration of that sacred instrument, which has preserved it not only in spirit but virtually protected it from any sort of amendment. Even in States where such conventions are possible, it has been difficult, if not impossible to secure new Constitutional Conventions; although during the past ten or fifteen years, more changes have been made in State Constitutions than in all preceding time. Recent criticisms of our form of government, the panaceas offered for the correction of our ills, and the common expression that an eighteenth century Constitution is unfitted to the needs and wants of a twentieth century civilization, have led to an investigation of our representative system, and of our constitutional form in the hope of discovering the reason, if any there be, for our discontent, and finding, if possible, the real spirit of our Government.

Ours is a constitutional form of government; and this Constitution is not, as in England, made up of unwritten practices and customs, but is a written one,—the Federal Constitution being primarily an enumeration of powers in the General Government created thereby, and the State Constitutions being a series of limitations upon the powers of the people, or rather, upon their representatives. It is true, of course, that there are limitations in the Federal Constitution, to some of which reference will be made; and there are also some grants in the State Constitutions; but broadly speaking one is a grant and the other a limitation upon the powers of the respective governments. I shall not concern myself now with the mooted question as to whether we have an unwritten Constitution, either State or National, for it is not germane to the purpose in view, but it is perhaps just to assume that there are certain great and fundamental principles underlying all Constitutions, which, if stricken from the body of our constitutional law would leave it inert and helpless. These principles give to the Constitution, life and vitality, and recognition thereof has preserved it, where all others have failed.

Some surprises have grown out of this investigation and I

must confess to have seen new light upon some disputed questions. In the first place a constitutional government is not necessarily or essentially democratic. We have constitutional monarchies and constitutional aristocracies, and as a rule, these written declarations of fundamental law have been the results of compromise, in which both monarchical and aristocratic features have been retained; and every step toward a pure democracy has been resisted by both kings and nobles. In the earlier constitutional struggles democracy played no part, the all important question being whether kings or nobles should rule. The Great Charter wrung from King John by the feudal barons on the plains of Runnymede, which is frequently referred to as the foundation of our liberty, had little in it of importance to the people. It sought to safeguard the rights of the church, the nobility and the freeman; and the serfs, although constituting an overwhelming majority of the people, were not included within its provisions. It merely converted the government from a monarchy into an aristocracy and placed such checks upon the power of the King that he could not levy taxes without the consent of the nobility.

The Great Council was finally split into two bodies, one the House of Lords, made up of the greater nobility and the higher church dignitaries; and the House of Commons, representing all other classes who enjoyed political rights. This latter class was not, as is generally understood, made up of what may now be called the common people, although in theory it represented the entire English citizenship. As a matter of fact by reason of the limitations upon suffrage, a very large part of the English people, at the time of the creation of the House of Commons, and for a long time thereafter, had no voice in parliamentary elections. It has been stated that because of property qualifications, not more than one-fifth of the people were entitled to vote for members of Parliament. Consequently the membership of the House of Commons did not differ essentially from that of the House of Lords. Indeed until the parliamentary reform in 1832, the laws enacted in England were not essentially democratic. They were largely in the interest of the land holding aristocracy and the two houses were simply checks upon the powers of the King. In Black-

stone's time, which corresponds somewhat with that of the creation of our government, Kings, Lords, and Commons were, theoretically, three coördinate branches of the English government, each having power to defeat legislation desired by the other two. As a matter of fact, however, as I shall subsequently attempt to show, the power of the King was not so large at this time in practice as in theory.

All the early constitutional struggles revolved around the question of revenue, and the constitutional checks were primarily upon the royal prerogative of taxation. Gradually Parliament extended its powers and succeeded in making its assent necessary to the passage of all laws affecting the welfare of the nation. By a singular coincidence exercise by the mother country of the taxing power was one of the chief excuses for our American Revolution. According to history, as I read it, checks upon the absolute power of legislation did not grow out of any development toward popular government, and they are not essential to a democracy—indeed they seem to be the very opposite. This much of English history is essential as a starting point in the consideration of our American system of representative government; for it is everywhere conceded that our plan is modeled upon the English system and is the crystallization of ten centuries or more of English history and experience.

The first document in our political evolution which was phrased, no doubt, by Thomas Jefferson, had in it the germs of a pure democracy. Of Jefferson someone said: "His greatest fault was that he died as he lived in the odor of phrases and whose greatest virtue was that he was wise enough to sacrifice phrases to reality, to accept in practice what he rejected in theory." Let me here quote from that immortal document:

When in the course of human events, it becomes necessary for one to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their

just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. . . . Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. . . .

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused, for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within. . . .

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. . . .

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation. . . .

For imposing Taxes on us without our Consent;

For depriving us in many cases, of the benefits of Trial by Jury: . . .

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies: . . .

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

It is now quite generally conceded that this document is full of contradictions and has the "odor of phrases," but in what has

been quoted is to be found the germs of a political democracy. Parenthetically let it be said that some of these quotations, which may not now appear to be germane, will be used later in referring to another matter which is the present subject of heated debate. At the time when this revolutionary document was given to the world we had no aristocratic class save the much hated English governors, and there was such industrial, social, and political equality among the people that the majority of them were really for a larger measure of popular rule than was then known to the English people. Before the revolution, nearly all the colonial governments were acting under charters which were modeled after the government of the mother country, and these contained the checks and balances incident to that system. The Governor had very large powers. As a rule, he appointed the judges and other civil officers, could suspend the council, the upper branch of the bi-cameral system, convene or dissolve the legislature at pleasure, and had the unqualified right of veto. Upon the advent of the Revolution, practically every colony eliminated every monarchical and aristocratic feature from its fundamental law. Although a Governor was provided, he was elected, as a rule, for a short term, and in every State, there was an executive or privy council which the Governor was required to consult on all important matters. Power to veto legislation was abolished in all except two States, to-wit, Massachusetts and New York, and in the latter, the Governor, the Chancellor, and Judges of the Supreme Court had the qualified right of veto. The appointing power was either taken away or expressly limited, and, power to dissolve the legislature was everywhere abolished.

In nine States the Judges were elected directly by the legislature, in one indirectly, and in three, the legislature participated in their election. In every State the Judges could be impeached; in six they could be removed, according to the English custom, on an address from both branches of the legislature, and the term of office in eight States was during good behavior. In the others, they held for comparatively short terms. In each and all of these Constitutions as amended, the legislature was supreme, the Governor, as a rule had no veto power, and the courts did not

assume to pronounce an act null and void. There was no recognition of the English theory of checks and balances.

Passing the Articles of Confederation of the New England Colonies of 1643, the Albany plan for a general government of the colonies of 1754, and Franklin's scheme of government for Pennsylvania, the latter of which is full of significance as indicating the democratic tendencies which he had absorbed while in France, and coming to the Articles of Confederation themselves, which may justly be called our first Federal Constitution, we find that they created a confederacy called and known as the United States of America, and adopted the representative system of government, the representatives being chosen as the legislature of each State might direct, each State having an equal vote.

Legislative power was vested in a single body called the Continental Congress, which was unchecked by either an executive or a judiciary. In this respect it was quite like the English government of today, with its practically omnipotent House of Commons. One striking thing in these articles is the following: After providing how the delegates should be selected by the States and fixing the time of their meeting, it says: "with a power reserved to each State to recall its delegates or any of them at any time within the year, and to send others in their stead for the remainder of the year."

The so-called modern recall is not as new as has been imagined. There were, as already suggested, no checks and balances, as now understood, and there was but one supreme law-making body. True, a judiciary was authorized, but this was for the trial of piracies and felonies committed on the high seas, and appeals in all cases of capture. Certain other questions were reserved for submission to courts or judges; but nowhere were they given any power to pass upon the constitutionality of a law or to declare the same null and void. I cite this document as an evidence of the democratic spirit of the times and as a proof of the absence of any checks upon the representatives of the people, save as recognized by the legislative body itself.

The Confederation failed, not because of the form of its fundamental law, but because of the utter impotency of the government or league created thereby. It must not be assumed, how-

ever, that all forms of government preceding that of the Federal Constitution were essentially democratic. The fact is that save in a few of the colonies there was no such thing as a democracy. Universal and unlimited suffrage was unknown; property qualifications were almost universal, and then, as now, the right to actual participation in governmental matters, was a mere privilege conferred by law. As electors, we are prone to forget that in the exercise of the franchise we are acting not only for ourselves, but for many others, and are trustees with all the duties that such a relation imports. We act for all who have not been given the privilege, for women and children, for aliens, Indians, and practically for the negroes. The actual voters are but a small part of the population.

The period between the adoption of the treaty with England in 1783 and the adoption of our Constitution in 1788 has been truly called, "the critical period in American history." The confederated government was impotent, jealousies arose among the States, intestinal difficulties arose and some of the States were near unto war. It was a chaotic and dangerous period in our existence, and but for the courage, foresight, and patriotism of the Fathers, who met at Philadelphia in 1787, we should doubtless have remained a loose confederation of independent States.

This Convention was called for the express purpose of amending the Articles of Confederation and some of the delegates were specifically limited in their instructions to this definite purpose. But it transpired that this body was revolutionary in character and that it in fact brought about a peaceful revolution. Of the men chosen as delegates, I here quote the following:

In its composition, this group of men left nothing to be desired. In its strength and in its weakness, it was an ideally perfect assembly. There were fifty-five men, all of them respectable for family and for personal qualities,—men who had been well educated, and had done something whereby to earn recognition in these troubled times. Twenty-nine were university men, graduates of Harvard, Yale, Columbia, Princeton, William and Mary, Oxford, Glasgow and Edinburgh. Twenty-six were not university men, and among these were Washington and Franklin. Of the illustrious citizens who, for their public services, would naturally have been here, John Adams and Thomas Jefferson were in Europe; Samuel Adams, Patrick

Henry, and Richard Henry Lee disapproved of the convention, and remained at home; and the greatest man of Rhode Island, Nathaniel Greene, who—one likes to think—might have succeeded in bringing his state into the convention, had lately died of a sun-stroke, at the early age of forty-four. . . .

The names of Washington and Franklin stood for supreme intelligence and consummate tact. Franklin had returned to this country two years before, and was now president of Pennsylvania. He was eighty-one years of age, the oldest man in the convention, as Jonathan Dayton of New Jersey, aged twenty-six, was the youngest. The two most profound and original thinkers in the company were but little older than Dayton. Alexander Hamilton was thirty, James Madison, thirty-six. Among political writers, these two men must be ranked in the same order with Aristotle, Montesquieu, and Locke; and the "Federalist," their joint production, is the greatest treatise on government that has ever been written. John Jay, who contributed a few pages to this immortal volume, had not been sent to the convention, because New York did not wish to have it succeed. Along with Hamilton, New York sent two commonplace men, Robert Yates and John Lansing, who were extreme and obstinate Antifederalists; and the action of Hamilton, who was thus prevented from carrying the vote of his own state for any measure which he might propose, was in this sadly embarrassed. For another reason, Hamilton failed to exert as much influence in the convention as one would have expected from his profound thought and his brilliant eloquence. Scarcely any of these men entertained what we should now call extreme democratic views. Scarcely any, perhaps, had that intense faith in the ultimate good sense of the people which was the most powerful characteristic of Jefferson. But Hamilton went to the other extreme, and expressed his distrust of popular government too plainly. His views were too aristocratic and his preference for centralization was too pronounced to carry conviction to his hearers. The leading part in the convention fell, therefore, to James Madison, a young man somewhat less brilliant than Hamilton, but superior to him in sobriety and balance of powers. Madison used to be called the "Father of the Constitution," and it is true that the government under which we live is more his work than that of any other one man. From early youth his life had been devoted to the study of history and the practice of statesmanship. He was a graduate of Princeton College, an earnest student, familiar with all the best literature of political science from Aristotle down to his own time, and he had given especial attention to the history of federal government in ancient Greece, and in Switzerland and Holland. At the age of twenty-five he had taken part in the Virginia convention which instructed the delegates from that state in Congress to bring forward the Declaration of Independence. During the last part of the war he was an active and influential member of Congress, where no one equalled or approached him for knowledge of English history and constitutional law. . . . He looked at politics judicially,

and was so little of a party man that on several occasions he was accused (quite wrongfully, as I hope hereafter to prove) of gross inconsistency. The position of leadership, which he won so early and kept so long, he held by sheer force of giant intelligence, sleepless industry, and an integrity which no man ever doubted. But he was above all things a man of peace. . . .

Of the fifty-five men here assembled, Washington, Franklin, Hamilton, and Madison, were of the first order of ability. Many others in the room were gentlemen of more than ordinary talent and culture. There was John Dickinson, who had moved from Pennsylvania into Delaware, and now came to defend the equal rights of the smaller states. There was James Wilson of Pennsylvania, born and educated in Scotland, one of the most learned jurists this country has ever seen. Beside him sat the financier, Robert Morris, and his namesake Gouverneur Morris of Morrisania, near the city of New York, the originator of our decimal currency, and one of the far-sighted projectors of the Erie Canal. Then there was John Rutledge of South Carolina, who ever since the Stamp Act Congress had been the mainstay of his state; and with him were the two able and gallant Pinckneys. Caleb Strong, afterward ten times governor of Massachusetts, was a typical Puritan, hard-headed and supremely sensible; his colleague, Rufus King, already distinguished for his opposition to negro slavery, was a man of brilliant attainments. And there were George Wythe, the chancellor of Virginia, and Daniel Carroll of Maryland, who had played a prominent part in the events which led to the creation of a national domain. Oliver Ellsworth of Connecticut, afterwards Chief Justice of the United States, was one of the ablest lawyers of his time; with him were Roger Sherman and William Johnson, the latter a Fellow of the Royal Society and afterward president of Columbia College. The New Jersey delegation, consisting of William Livingston, David Brearly, William Patterson, and Jonathan Dayton, was a very strong one; and as to New Hampshire, it is enough to mention the name of John Langdon. Besides all these there were some twenty of less mark, men who said little but listened and voted. And then there were the irreconcilables, Yates and Lansing, the two Antifederalists from New York; and four men of much greater ability, who took an important part in the proceedings, but could not be induced to accept the result. These four were Luther Martin of Maryland; George Mason and Edmund Randolph of Virginia; and Elbridge Gerry of Massachusetts.

The record which we now have, shows that these men were familiar with English laws, customs, and traditions, and with ancient and modern history, although upon one point, as I shall attempt to show, they were, perhaps, mistaken. Called together for a definite and specific purpose, it is now perfectly manifest that they did not intend to follow their instructions for within three days, they decided that they would not attempt to amend

the Articles of Confederation, but on the contrary would strike out boldly and do what they deemed best for the general welfare. The resolution was to the effect that: "A national government ought to be established consisting of a supreme legislature, judiciary, and executive." This was nothing short of revolutionary, justified at a subsequent stage in this language from Randolph—"where the salvation of the Republic is at stake it would be treason to our trust not to propose what we found necessary," and Hamilton declared: "The state sent us here to provide for the exigencies of the union. To rely on any plan not adequate to these exigencies merely because it is not clearly within our powers, would be to sacrifice the means to the end."

There was considerable opposition to this resolution and finally to the adoption of the Constitution itself in many of the States because of its revolutionary and undemocratic character. One who reads the debates of that Convention must conclude that one of the strong, if not the strongest objective of the members was the protection of private property, and he must also conclude that these men had little faith in the mass of mankind. Their natural instincts were conservative and they had a traditional respect for the rights of property. In the debates with reference to the choosing of a chief executive, practically all urged some indirect form of election to preserve the whole government from "too much democracy." Knowing of their familiarity with history, ancient and modern, it is not difficult to understand their fears of a pure democracy. They understood the vicious circle "democracy, anarchy, despotism," and while they announced that the government was of the people and for the people, they were careful to interpose such checks as would make it very difficult for the majority to rule.

There was a general distrust of the people, and throughout the whole structure ran the principle of the separation of the powers of government and a system of checks theretofore unknown in any form of constitutional government. It is needless to quote expressions to show the fear which the majority had of the rule of the people. True they were to be represented in the lower house, but they were to be held in check by an aristocratic body known as the Senate and an express veto power was lodged in

the executive, whose selection was so far removed from the people themselves that he was not directly responsible thereto. While the veto power was not expressly reposed in the judiciary; nor was it given express power to declare acts null and void, most of the framers of the document secretly believed that the Court would have and assume this power. All agreed that a pure democracy was not possible, if for no other reason because of the large extent of territory, and some of them boldly asserted that "all the political evils which then beset them were due to the turbulence and follies of democracy." I have here quoted from Edmund Randolph. Elbridge Gerry said: "Democracy is the worst of all political evils." It has been remarked that the most eminent democratic leaders of the time were not at the convention; namely Samuel Adams, Thomas Jefferson, Patrick Henry, and Thomas Paine. But it is also true that few, if any, of these absentees thought it possible to create a pure democracy.

The real leaders, while of course advocating the rule of the people, were careful to remove the government itself as far from a democracy as possible and to make it as difficult as they could to change either constitutional or statutory law. Saturated with English history and English law, they established the two houses, one to be a check upon the other, and looking at the theory rather than the practice in England, they created an executive department with the veto power; and then made it as difficult as possible to override this veto.

John Fiske has demonstrated that at this very time the legislative and executive departments in England were not distinct and separate, and that instead of following the English Constitution in this matter they conferred the duties of the real English executive upon the Prime Minister. As a matter of fact they took Blackstone's theory of the division of power between King, Lords, and Commons, which was nothing more than a legal fiction. Most of the members were familiar with Montesquieu's writings, for he was frequently quoted in the debates, and he too is shown to have had an erroneous opinion regarding the checks and balances of the English government. In Great Britain, the supreme power is in the Commons and the Sovereign is largely a legal fiction. The real English executive is ordinarily the

First Lord of the Treasury, styled Prime Minister, and his cabinet consists of the chairmen of the most important committees of the House. The Crown in England is and has been for centuries a political nullity, and of late years, the House of Lords is not much better.

By the revolution of 1688, it was practically decided that thenceforth the English executive was to be an arm of the legislative department, and not a separate power, and the work was finally completed in 1784, when, by election, Pitt was made Prime Minister of England. It is perfectly manifest that when the powers of the King came to be vested in a ministry, a veto on the part of the King was impracticable, because the Prime Minister was responsible for the acts of the King, and the latter could not consistently sanction the defeat of a measure which his Prime Minister had advocated in Parliament. This executive check upon the popular will had ceased to be a part of the English Constitution at the time of the adoption of our own, but the fathers thought it necessary to create a separate executive department and to invest it with the veto power.

An independent judicial department was, of course, new, although the germs for its independence were to be found in English history. The judges in England were appointed by the Crown and were removed by him alone, and during this so-called period of independence the English had their notorious "Jeffreys." To guard against this the Act of Settlement of 1701 provided that judges should be removed only upon an address by Parliament to the Crown. This, of course, made the judges in a measure independent of the Crown, and the act was undoubtedly in the interest of the people, and intended as a check upon arbitrary power in the Crown. But the judges were not intended by this act to be independent of the action of Parliament. The English judiciary is really an offshoot from the executive department and if political history be consulted it will be found that its power to annul legislation was originally a phase of the veto power. As late as the year 1686, in *Godden vs. Hales*, the court of the King's Bench held important provisions of the statute of 25 Chas. II void because of conflicting with the King's rightful prerogative. It may be that this and a few of

the earlier decisions of State Courts were in the minds of the framers of the Constitution; but it is significant that they expressly refused to vest any part of the veto power in the courts, and that they did not expressly give courts power to declare any act of Congress invalid. Such power had been declared under State Constitutions, however, notably in Virginia, Rhode Island, North Carolina, and perhaps Massachusetts and New Jersey. But the Judges who announced the decision in Rhode Island were promptly recalled and the decision in North Carolina was subject to much adverse comment.

As much of the Federal Constitution was drawn from those of the several States, we may assume that the members of the Constitutional Convention were familiar with these decisions. There was a respectable minority who opposed any such doctrine upon the floor of the Convention, but undoubtedly a majority of the members believed that the judiciary had this power. Madison, Mason, Wilson, Gerry, and Luther Martin, all contended that the judiciary could exercise it without any provision expressly conferring the power, and this, it seems to me, is the same view. Gouverneur Morris, who claims to have drafted the Constitution, is thus quoted in Elliott's Debates, Vol. 1, p. 507:

In framing that part with reference to the judiciary, it became necessary to select phrases which, while expressing his own views, 'would not alarm others.' While firmly convinced that under both Federal and State Constitutions, the judiciary has power to declare legislative enactments invalid, I was amazed to find that Chief Justice Marshall, who finally wrote the opinions sustaining this view, was at one time of a contrary opinion. As an attorney in the case of *Ware v. Hylton*, 3 Dallas Rep., he said, in argument:

'The legislative authority of any country can only be restrained by its own municipal constitution; this is a principle that springs from the very nature of society; and the judicial authority can have no right to question the validity of a law, unless such a jurisdiction is expressly given by the Constitution.'

That the judiciary is independent and has the power to declare null and void acts of Congress in conflict with the Federal Constitution, or not authorized thereby, is now accepted doctrine; and that such power was intended to be conferred is now quite clear.

As to the Removal of Judges.—The Constitution of the United

States provides that all Federal Judges shall hold their office during good behavior. Just what this means has never been expressly stated. Under English practice, since the Act of Settlement, they are removed on address of Parliament to the Crown. This was not impeachment. It was more in the nature of a petition for a recall. Doubtless the only method of removal under the Constitution is by impeachment, but the grounds of impeachment are not enumerated. The Constitution of Massachusetts now provides for removal by the executive upon address by both branches of the legislature and so, I understand it, does the present Constitution of Pennsylvania. At the time of the adoption of the Federal Constitution six of our States had Constitutions providing for removal on address from both branches of the legislature, and in eight, the term of office was during good behavior. In the other five, they held during short terms. So much for the checks on representative government. According to the original plan there were three branches, a part only, of one of which, was to be elected by the people. These members of the House of Representatives were to be held in check, first by the Senate, which was selected by the legislatures of the several States; second, the President, who was also indirectly elected by the people, and third, by the Courts, whose members were appointed and given life tenure. So that the real spirit of the Constitution is to be found in the dread of democracy and in these checks upon the absolute will of the people.

During the first twelve years of the Constitution thirteen men were appointed to the Supreme Bench, and it is now pretty well established that all, before their appointment, had, in one way or another, expressed themselves in favor of the power of the judiciary to annul acts of Congress; and it is apparent to the most superficial observer that our Courts are after all the supreme power in the land. In the first one hundred years of our existence, two hundred and one cases were decided by the Supreme Court of the United States in which acts of Congress, the provisions of a State Constitution, or a State statute, were held repugnant to the Constitution or the laws of the United States. No one, I think, has yet counted the number of cases of like character from the State Courts. During the past twenty-four years,

more than one hundred and three acts of Congress, State statutes, or Constitutions have been held invalid by the United States Supreme Court.

Another point was very carefully guarded in both State and Federal Constitutions, and this the power of amendment of these fundamental laws. It is noticeable that our Federal Constitution cannot now be amended by popular vote. The provision as to amendment is as follows:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of the Constitution, when ratified by the Legislatures of three-fourths of the several States, or, by Conventions in three-fourths thereof, as the one, or the other Mode of Ratification may be proposed by the Congress.

The extreme difficulty of amendment is well known. So far there have been but seventeen amendments. The first ten of these were made pursuant to promise made at the time of the adoption of the Constitution. The eleventh was made to meet a decision of the Supreme Court of the United States, and was the first exercise of the recall of judicial decisions expressed in a proper manner. The twelfth has reference to the meeting of presidential electors, to meet the party system of government which had then grown up, and the remainder were adopted to meet the issues growing out of the civil war,—although they have been made to serve other purposes, and generally speaking have not served the objects intended. The important features of the Fourteenth and Fifteenth have been wholly disregarded, although much has been made of the phrases, “due process of law” and “equal protection of the law” as applied to relations between white men.

Our own State Constitution has two provisions for amendment, as follows:

Any amendment or amendments to this constitution may be proposed in either house of the general assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general

election, and shall be published, as provided by law, for three months previous to the time of making such choice; and if, in the general assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people in such manner, and at such time as the general assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the general assembly, voting thereon, such amendment or amendments shall become a part of the constitution of this State.

At the general election to be held in the year one thousand eight hundred and seventy, and in each tenth year thereafter, and also at such times as the general assembly may, by law, provide, the question, "Shall there be a convention to revise the constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified, voting at such election for and against such proposition, shall decide in favor of a convention for such purpose, the general assembly, at its next session, shall provide by law for the election of delegates to such convention.

Each of these provisions is more liberal than are usually found in such documents; but there have been very few amendments to our State Constitution. Some of these were passed because of the abolition of slavery, and others to meet local conditions which as a rule, were comparatively unimportant. Upon these questions the people have a referendum vote, and so we have a precedent for the modern referendum. In some States it is almost impossible for the people to secure an amendment to the Constitution. We have one simple method, by going to the polls each tenth year and voting for or against a Constitutional Convention.

Such in general are the limitations upon the power of the people or their representatives in securing a change in constitutional law, which is the supreme law of the land. It is apparent that in so far as the Federal Constitution is concerned the majority of the people do not rule, and equally clear that the Fathers did not intend that they should. Without going more deeply into the history and character of our institutions, it may be asserted that under no other form of government are there such limitations upon the power of the majority, as exist in this country. True, the people rule, but they are subject to such

checks that it is often impossible to get results, and the minority are really quite as tyrannous as the majority.

No one believes it possible to have a pure democracy in this country, but many think that we can and should make it more democratic, and more responsive to the will of the people. No one seriously proposes, however, to dispense with the representative system, although many would make it more representative in character; and some proposals come dangerously near destruction of the plan, certainly destructive of what many of the Fathers thought it to be. Generally speaking, under the representative system, the representative is the servant and the people are the masters. The servant is to carry out the will of the people, and to represent their views, at least in so far as they have been expressed, subject, of course, to the checks imposed by the Constitutions, which are supposed to be the supreme will of all the people. Quite a large number of the members of the Constitutional Convention, and many people even to this day believe that the representative is selected to execute his own views, which after conference and discussion with his fellows are more likely to be correct than the immature and sometimes hasty notions of the people who selected him. There is much force in either position, and the validity of one of the propositions now being advocated depends upon the solution of this problem.

If the representative is truly to represent, then he should carry out the views of those he represents, and not his own, in so far as those views have been expressed; and, also to act as he thinks they would have him do, had they been given opportunity for expression. If, on the other hand, he is selected because of his ability, and not given explicit instructions, then he is to carry out his own views after due consideration, discussion, and reflection, and thus better in the long run to serve those who selected him. In either event, however, he is chosen to represent the majority who elected him, and to act for their ultimate good. The right of recall at the end of his term has always existed, and the right of recall during his term of office is now proposed. This latter presupposes a mistake in the original selection of the man, and involves the chance of a like mistake in the selection of his successor.

As to administrative and legislative officers, I see nothing in the recall inconsistent with representative or republican government. As applied to judicial officers, I think there is a decided inconsistency, unless we are mistaken in assuming that the judiciary is a separate and distinct department of government, created, among other purposes, for keeping the representatives of the people within due bounds. Unless our written Constitutions mean that, they have no real vitality, no substantial force. To recall a judge does not mean a change of decisions. We had a judicial recall here in Iowa after the decision on the prohibitory liquor amendment, and one by one, three or four men who joined in that decision met defeat; but the actual decision was not affected thereby. Indeed, it has twice been followed, and is now regarded as a part of our constitutional law. The judges have the power to overrule previous decisions and this they will do when occasion demands, recall or no recall.

Occasionally we have incompetent, corrupt, prejudiced, or partisan judges, and sometimes men whose behaviour is not good. As to these, the power of impeachment exists under all Constitutions. If any change be needed here, it is to make this power more effective and, perhaps, it would be well to subject them to removal upon an address by Congress or the State legislature, as in England, and in Massachusetts. No harm has come from the exercise of this power, and the senior Massachusetts Senator sees nothing really objectionable in it. In this connection, it should be remembered that one of the chief complaints lodged against the King in our Declaration of Independence was that he had failed to give his assent to laws for establishing judiciary powers and had made judges dependent on his will alone for the tenure of their office, etc. The chief difficulty with judges at all times has been their dependence upon the appointing power, and Parliament, in order to set them free, deprived the appointing power of its right of removal. The legislative body assumed the right of removal upon address, and this, in view of all history, is the only safe method. Most men believe, I think, that the independence of the judiciary is vital to free institutions and history confirms this view.

As to the Recall of Judicial Decisions.—This power has always

been with the people in so far as it involves any question of constitutional law, and I do not hear of any one who would apply the remedy to ordinary controversies between man and man. Of course, every law suit involves primarily individual rights, but when those rights are dependent upon a law which is contrary to the Constitution, the people should have the same ultimate right of changing the Constitution as they do to change the statutory or the common law. But in either case it should be done in an orderly method. And when done, it should not be to settle a particular case, but to afford a definite rule of action for all future time in like cases.

To submit single cases to the people would be to make as many rules as there may be cases, and instead of the rule being an universal rule of human conduct, it would become a wilderness of single instances and generally an *ex post facto* law, which has always been condemned by sensible people. If the court goes wrong on a matter of common or statutory law, the legislature changes the rule by the enactment of a general statute upon the subject, and so if the court should place an interpretation upon a constitutional provision which the people think is wrong, the method for changing it is to amend the Constitution. This is exactly what happened in the early days of the Republic. The Supreme Court of the United States decided that under the Federal Constitution, a citizen of one State, or the citizens or subjects of any foreign State, might sue any one of the United States. This assault upon State sovereignty was so severe that Congress, by necessary resolution, adopted the Eleventh Amendment which expressly provides that "the judicial power of the United States should not be construed to extend to any such suits either at law or in equity." This was the first effectual recall of a judicial decision, done in an orderly fashion, and so worded as to apply to all future controversies.

The remedy afforded is plain and the only reason for the recent proposal to submit the matter to the people is the difficulty in securing amendments to the Constitution. Admitting this difficulty, the remedy would seem to be to so change the Constitution as to make amendments thereto easy of accomplishment. There is no reason, to my mind, why this should not be done.

Our people are better educated than they were when the Constitution was adopted. Means of communication are now speedy, whereas they were then slow; the people themselves are more familiar with our government and its laws, and have a wider experience than they then had, and there is no reason why so much time should be given for reflection and the path to amendment made so difficult.

Here in Iowa, we have had the means at hand. Three times I have had the opportunity to vote upon the question of whether we shall have a new Constitutional Convention, and within three years each and every elector has had this same opportunity. Here was a chance to effectuate a recall of judicial decisions in an orderly way, but the people did not avail themselves of it. Had a majority voted in favor of this Convention, we could have placed equal suffrage, prohibitory liquor laws, the initiative and referendum, compulsory workmen's compensation acts, or almost any other matter in our fundamental law; but we did not see fit in our sober moments to do so. The recall of Federal judicial decisions is not very strenuously advocated, and in place of that remedy, I would suggest that in addition to a constitutional amendment there is to be added the tremendous force of well formed and deliberate public or popular opinion which eventually finds its way, even into judicial decisions. Time will not permit of a demonstration of the fact that public opinion does make itself manifest in judicial pronouncements. I may safely affirm that on account of this very fact, decisions are now being announced by our highest court which would not have been made twenty-five or thirty years ago.

In this somewhat desultory and disconnected way, I have endeavored to show that this is and always will be a representative government; that as a rule, but one branch of the government has been selected directly by the people; that while in many things the majority does actually rule, upon more there is a rule of the minority; that on every hand there are checks upon the rule of the people and that we are far removed from a pure democracy; that every representative of the people is hedged about by constitutional and other limitations, and that in the end the judicial department is the final arbiter in determining

whether the representatives have kept within due bounds. It need only be stated in conclusion that this final tribunal is at once the strongest and yet the weakest department of government. It has the power to decree, but without the executive, absolutely no power to enforce. As I remember it, not the slightest attention was paid by the executive department of the government to the decision of Chief Justice Marshall in the famous case of *Marbury vs. Madison*, wherein the supremacy of the Court in interpreting the Constitution was so vigorously maintained. Andrew Jackson, when President, once took issue with a decision of the Supreme Court of the United States, and publicly declared, "John Marshall has made his decision, now let him enforce it." Of course, he knew that the Court, without the aid of the executive, was absolutely powerless. It has been truly said, "The chief value of a court lies in its will and not in force."

There is a growing distrust of the representative system and many schemes for democratizing it, but no one is so bold as to advocate its entire abolishment. For a moment let us look at the representative system to discover, if we may, the reasons for this distrust. Primarily the trouble is not so much in forms of government, as in the frailties of human nature. Some one has said: "The people always get what is coming to them." Just so long as men may profit from legislation, you will find graft, just so long as we neglect our duties as citizens, we will have corrupt bosses, just so long as we encourage exploitation, we shall be exploited. Eternal vigilance is the price of liberty, and eternal vigilance will give us the government we desire. If we have been at fault in choosing our representatives, is there any guaranty that we will do any better in discharging one and selecting another? If our representatives have misrepresented us, and if in truth, we have had an "invisible government," who is to blame? And will any change result from a revision of our machinery? These are the present day problems for every thoughtful man. We are assailing time-honored and well-established heritages, which have so long existed as to give character to our civil institutions and care should be taken that we do not destroy the very foundations

upon which we have rested in such security in the fateful years that have passed.

Some one has discovered, or thinks he has discovered, an economic determinism which applies to political events and has suggested that all forms of graft have been brought about by the people themselves, who, in the early days of the Republic and of the States gave away with lavish hand, not only all sorts of public franchises, but whole empires of land, and bonuses and subsidies of all forms and descriptions. Public credit was loaned to private enterprise and our prodigality has never been equalled. This may be said to have been the era of exploitation and of "prosperity in our palaces." Private fortunes were rapidly accumulated through governmental favors and it is not strange that representatives of the people who were passing out the patrimony of the government should demand some share of the swag. Farms, franchises, and tariffs were being freely given in order that we might grow and develop, and who should complain if some of our representatives were picking up fragments while basketfuls were being passed around? Because of the infirmities of human nature, graft was the inevitable result in our period of exploitation.

With our free territory practically exhausted, with our infant industries firmly established, with a realization on the part of the people that franchises are valuable and that this value came by reason of their presence and the further reflection that after all the people pay the bills, there came a conversion which has changed our attitude toward many public questions. As our aims in exploitation became accomplished, means which were formerly deemed reputable, or at least winked at, are condemned. If we have had graft, if we have had an "invisible government," it is nothing more than we deserve and for which we alone are responsible.

It is now proposed to make our government as nearly democratic as the representative system will permit, and to shorten the pendulum so as to make it move as fast as the people wish it to go. Personally I do not believe there is great need for radical changes in our governmental mechanism. The recall is but a confession that our first choice was bad or made in reckless haste,

and there is no assurance that our second choice will be more deliberate or that it will be free from mistakes. The initiative and referendum is a confession that our representatives fail to represent us, and I am not assured that we shall have any better success in proposing laws or in making them, than we have had in selecting men with whom we are supposed to be more or less acquainted.

All these measures are simply confessions of previous mistakes and indirect promises that in the future we shall give more attention to public affairs and take a keener and more intelligent interest in what seems to be for the common good. When we do that, we shall have better representatives and a more responsive government than we now have, although we do not adopt the initiative and referendum, the recall, or the recall of judicial decisions. Whether or not these proposed reforms can be brought about without a change in the Constitution is, perhaps, of more than passing interest. Doubtless as to all officers whose terms are not fixed by the Constitution, statutes may be changed so as to provide for a recall, but there is much doubt about the validity of a statute which would either directly or indirectly deprive one of an office, the term of which is fixed by the Constitution, during the term for which he has been elected.

The local initiative and referendum have generally been sustained and the Supreme Court of this State has unequivocally upheld such legislation in at least two cases. Whether either may be given State- or Nation-wide application is of more difficulty, the solution of which depends primarily no doubt upon what view is taken of the representative system of government. If the representatives are to be regarded as mere agents, bound to carry out the wishes of their constituents, it may be that both the State-wide initiative and referendum can be sustained. If, on the other hand, the representatives have duties and responsibilities of their own—and the Constitution expressly vests in them all legislative powers, then it may be that any attempt to place purely legislative powers in the hands of the people will meet with defeat. A numerical majority of the Courts, as I understand it, have held a general State-wide initiative and referendum unconstitutional. Some early cases in this State seem to have

decided that a referendum vote on a State law is unconstitutional. In at least two States, to-wit, Vermont and Michigan, a general referendum was sustained. But as already suggested there may always be a referendum upon a State Constitution, and in consequence the people have, in many States, changed their Constitutions so as to authorize all of these experiments.

In order to more thoroughly democratize our system rather than to change its form, many States have abolished the convention system for the nomination of officers—which convention was a purely representative body—and substituted compulsory primary elections. Others, without authority of law, have provided for senatorial primaries, and also election of such officers by the people. The Congress just closed, after a long struggle has now proposed an amendment to the Federal Constitution, providing for the election of United States Senators by direct vote of the people instead of indirectly by the legislatures. Presidential primaries have been authorized in many States and doubtless such a measure will some day be passed by Congress. It is also proposed to elect the President by direct vote, instead of indirectly through an Electoral College, which body has not followed the Constitution for many years. And the next step in this line of development will be his election by a majority vote of the electors. Schemes have also been formulated for making all judicial positions elective, and the terms of office short. There is merit in each and all of these propositions, unless it be the last one stated. They are all essentially democratic, for they tend to establish the rule of the people, and to reestablish what is now thought to be the true type of representative government.

It is apparent that under our system, complex as it is, the people do eventually rule, but it is also true that because of the many checks upon the exercise of their power, they have become discouraged, and by reason of inattention and carelessness in the selection of officials, they have not had efficient representative government. In the end, despite all checks, they will have what they want, and the only fear we should entertain is of their resort to revolutionary methods to get it. Constitutions may be regularly amended, statutory and common law rules changed, and court decisions overruled. All these have been done, many, many

times, and the fundamental thought which I wish to leave with you is this: Granted that we cannot have a pure democracy in this country, and that we do not wish it, either because it is impossible, on account of our vast population and great extent of territory, assuming that we must have the representative system, and that there must be a chart which will guide and control these representatives, we come back to the simple proposition, which of the checks upon hasty, ill-timed, and poorly digested legislation should we dispense with. Surely not the legislative bodies, or either house thereof. Doubtless it would be wise to have all members selected by direct vote and for a provision whereby these representatives will immediately enter upon the discharge of their duties, instead of the present scheme whereby the old and discredited representatives hold over and pass such legislation as the people have either expressly or impliedly disapproved. Shall we deprive the chief executive of his vast power, and make of him a mere figurehead, as the King of Great Britain now is? Convincing arguments may be made in favor of this proposition, but I am not, as yet, converted.

No one proposes to dispense with courts, and no sound thinker would deprive them of the power of applying and construing the Constitution. To do the latter, would deprive us of the benefits of constitutional government as now understood. In the construction of the Constitution, ultimate authority there must be somewhere, and in no other place can it be more safely reposed than in an independent and fearless judiciary. Some would deprive the courts of their power in this respect, leaving the matter to the legislature and the executive through his veto power, believing that in these there is sufficient security; but others and by far the greater number feel that this power should remain where it now is, in the hands of a body of trained men, whom we must assume are better able to decide complicated questions of law, than the people themselves, or their ordinary representatives.

As there has been considerable criticism of the courts and of court decisions, I shall refer to a few fundamental principles embodied in the Constitution which it is the duty of the courts to enforce:

The privilege of "the writ of habeas corpus shall not be suspended."

"No bill of attainder or ex post facto law shall be passed."

"No tax or duty shall be levied on articles exported from any state."

"The trial of all crimes shall be by jury."

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

"Or abridging the freedom of speech or of the press, the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue save upon probable cause, supported by oath or affirmation.

"No person shall be held to answer unless on presentment or indictment; no subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

"In criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial jury, to be confronted by the witnesses against him, and have compulsory process for obtaining witnesses in his favor; to have assistance of counsel.

"In suits at common law, the right of trial by jury shall be preserved and no fact tried by jury shall be re-examined in any court than according to the rules of law.

"Excessive bail shall not be required, nor excessive fines imposed.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person the equal protection of the laws." (This last is found in the Fourteenth Amendment.)

These are all fundamental and axiomatic principles of law established to maintain justice, insure domestic tranquility, promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity. And the vital question now is, Which, if any, shall we dispense with? In some quarters it is

said that instead of preserving us from the tyranny of the majority they have established the tyranny of the minority. The latter may for the present purposes be assumed, but I feel quite sure that if ever any of them are violated to your prejudice you will at once become a part of the tyrannous minority and the greater the number affected, the sooner that minority will become the majority. Fundamental in character, they rightly find place in a constitutional document which is not subject to speedy change. If any of them were doubtful or experimental, they should not have been put into a Constitution, but might find their proper place in legislative enactments, which may easily be changed. This thought distinguishes between what is properly a constitutional limitation or provision and a matter which should be embodied in statutory law.

There are, of course, some implied limitations growing out of expressed powers which I shall not take time to enumerate. Suffice it to say that I have heard of none whose opinion is entitled to respect who would repeal any of these express limitations. Many do complain and justly too, of the interpretation which has been put upon them by some judges, and criticize certain specific decisions, and others question decisions based upon implied limitations, and I find myself in agreement with part of these complaints. To my mind, the Commerce Clause has been unduly extended so as to impliedly cover limitations not expressed. A striking example of this is found, I think, in a decision obtained from the Supreme Court of the United States in what are called the "original package cases." Recognizing in those cases that the general government has no police power, and that this was retained and reserved in full force by the States themselves, the court found that the Commerce Clause, by implication, limited the police powers of the State. I find myself in distinguished company in doubting the soundness of this conclusion.

Again, the phrase, "due process of law" has been wrenched in some opinions, although none of us would dispense with the provision. We would rebel and be joined in that rebellion were the legislature arbitrarily to take our property away from us, or place that power in any body, judicial or otherwise. This phrase,

however, has relation to adjective and remedial rather than to substantive law. In other words, it relates to methods of procedure and involves due notice, an opportunity to be heard, and some regularity of procedure.

A recent writer, in *The Independent*, seeks to show that the court's decision on the Fourteenth Amendment of the principle that property shall not be taken without just compensation, is a judicial amendment of the Constitution. He makes quite a strong case; but I apprehend most of us would be glad to take refuge under this amendment were our property taken for public use without compensation. But it does not follow that every one is entitled to compensation when his property has been confiscated. In the exercise of the police power it has always been understood that compensation need not be awarded.

The decisions in the liquor and brewery cases clearly so hold and these merely followed what has been called the slaughter house cases. The due process clause was undoubtedly bottomed upon the historic concept that it was a restraint upon the executive—the King—rather than upon the legislature. But as it reads, it applies equally to the legislative department with the exceptions already noted. The Supreme Court of the United States, especially in recent years, has given full recognition to what is called the "police power of the state;" but a few State Courts have stuck in the bark and made the ownership of private property of more concern than the general public welfare. I here quote a good definition of the police power:

It is much easier to perceive and realize the existence and source of it than to mark its boundaries or prescribe limits to its exercise. The power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of the social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property. As says another eminent judge, ' . . . Persons and property are subject to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the State. Of the perfect right of the legislature to do this, no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned.'

A Justice of the Supreme Court of the United States added this significant language:

There is nothing in *Magna Charta*, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was, the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our own situations and systems will mould and shape it into new and not less useful forms.

Others have said that no system of political economy or social order is embodied in the Constitution. But this is too broad, for there seems to be no room thereunder for the extreme doctrines of socialism. Not only has this due process clause been put to rather extraordinary uses in few cases; but the provision as to the taking of property for public use without just compensation, found in practically all State Constitutions, and by construction in the Federal Constitution, has been so used as to deprive the legislature, not only of its police power, but in effect to guarantee to the owner of property a certain compensation for the use thereof; the court, in effect, saying that no matter what the vicissitudes of the business the owner is entitled to a certain remuneration for the use, and that its judgment as to what is an adequate compensation was much better than that of the legislature, and in some few cases courts have assumed arbitrarily to fix compensation for its use. A few other courts have absolutely nullified and disregarded provisions which the legislature believed essential to the general welfare of the community, and given to property a sanctity which it does not possess.

Private property is, after all, an institution of society, and every one holds his own subject to the general welfare. Some few courts have, under State and Federal Constitutions, by judicial construction, made slaves of laborers and extended the provision preserving, not only the obligation of contracts, but the supposed freedom to make them, to an unlimited extent. But there is a strong tendency everywhere to recede from all these decisions, especially the more drastic ones. At one time, it was assumed that the legislature could not regulate or prohibit the making of any kinds of contracts,—that this was one of our inalienable rights; but happily this doctrine has now been repudiated.

In so far as the courts are an arm of the government in the interpretation and enforcement of laws, and Constitutions, they cannot be dispensed with. But in the exercise of their power to declare acts of the legislature invalid, they should proceed with the utmost precaution, and interfere only when there is no reasonable doubt as to the invalidity of the law. With the policy of the law or with its making, they should have nothing whatever to do. Encroachments by the judiciary will not be tolerated. On the other hand, a courageous, true, and faithful performance of duty will insure that esteem to which they, of right, are entitled. As the ultimate and supreme seat of authority in this country, they must be obeyed and respected, else anarchy will prevail.

Fortunately I am nearing the end of this tedious discourse. My only excuse for so long a paper is that it seemed opportune to consider questions now uppermost in the public mind, and upon which so much is being said, both by those who know and by many who do not know anything of the subject. Our experiment in government is again on trial, and there are many evil forebodings: this is not a new experience, however. As a matter of fact, we have long outlived the many periods fixed for our demise and notwithstanding present claims are a reasonably happy, contented and unusually prosperous people. By a strange coincidence, there are but two written Constitutions now in force which were in existence when our Constitution was adopted. These are the Massachusetts State Constitution and the Constitution of the United States. Surely there is something in them which accounts for this survival. They doubtless have some defects, but the ills of society are not due primarily to these defects. Generally speaking, our faults are the result of human imperfection. No other country has a better government than we, none so prosperous, none so just or so intelligent. It is constantly growing better; but it is not perfect. It will not be perfect until the great majority of the men who compose it become perfect.

Lastly, good government demands efficient service from every man and woman. These constituent units must be intelligent, frugal, moral, and educated. When the people really and under-

standingly believe that they are entitled to better and more efficient representatives, they will get them; but the change will not come from amendments to the machinery of government. Representative government has been and always will be an expression of the public demand, the public choice, and no sort of mechanism will permanently change this rule.

FRIDAY AFTERNOON SESSION

1:30 O'CLOCK

THE PRESIDENT: At this time I will name the delegates to the American Bar Association, viz: D. C. Shull, Sioux City; J. N. Hughes, Cedar Rapids; I. N. Flickinger, Council Bluffs.

MR. D. T. STOCKMAN: At the meeting of this Association one year ago, immediately after the President's Address, Mr. J. O. Crosby submitted the question of the collateral inheritance tax, which was continued at his request, to be taken up immediately after the President's Address this year. I understand Mr. Crosby is not present.

I therefore move you, that the subject of the discussion of this topic be continued to be taken up following the Address of the President next year, and the Secretary be notified to inform Mr. Crosby of the action of the Association.

The motion was unanimously carried.

REPORT OF THE EXECUTIVE COMMITTEE

SENATOR C. G. SAUNDERS: In the absence of the President, I was selected Chairman of this committee.

I beg leave to report on behalf of the committee, that the next meeting of the Association has been fixed at Burlington, Iowa, on the last Thursday and Friday in June, June 25 and 26, 1914.

REPORT OF THE NOMINATING COMMITTEE

SENATOR C. H. VAN LAW: Your committee beg to report the following nominations:

For President, John F. Lacey, Oskaloosa.

For Vice-President, F. F. Dawley, Cedar Rapids.

For Secretary, H. C. Horack, Iowa City.

For Treasurer, Frank T. Nash, Oskaloosa.

For Librarian, A. J. Small, Des Moines.

I move you that the rules be suspended and the Secretary cast the ballot of the Association for the persons named as nominees for the respective offices.

MR. R. M. HAINES: Without any desire to interfere with the report of this committee, I wish to call attention to the fact that for the last eight or nine years, at every meeting of the Association, we have varied from the fundamental law, which provides that the officers of the Association shall be selected without the intervention of a nominating committee. I do not care to raise the point of order at this time, but only call attention to the fact that it is a part of our fundamental law, and suggest that hereafter, or even at the present time the nominations be made from the floor of the convention, so that we may conform with the spirit of the fundamental law.

I therefore move as a substitute to the acceptance of the report of this committee, that John F. Lacey be elected as President of this Association for the ensuing year.

The motion was duly seconded and carried.

MR. D. D. MURPHY: I nominate F. F. Dawley for Vice-President.

The nomination was duly seconded and unanimously carried.

MR. J. H. McCONLOGUE: I move you, that H. C. Horack be selected as Secretary of this Association.

The nomination was duly seconded and carried.

MR. R. M. HAINES: I nominate Mr. Frank T. Nash as Treasurer of The Association.

The nomination was duly seconded and carried.

SENATOR VAN LAW: I nominate Mr. A. J. Small as Librarian of this Association.

The nomination was duly seconded and carried.

THE PRESIDENT: The next in order is the Report of the Committee on Law Reform, Dean E. B. Evans, Chairman.

REPORT OF THE COMMITTEE ON LAW REFORM

DEAN EVANS: The printed report of the committee is as follows:

To the Iowa State Bar Association:

Your Committee on Law Reform submits the following report, which we deem sufficiently important to merit the consideration of this Association. While one or more of the committee are affirmatively in favor of the adoption of each item in the report, and as to some of them all of the committee are in favor of their adoption, we have deemed it prudent to submit this report for the consideration and discussion of the Association without recommendation.

I.

Notwithstanding the negative action of this Association expressed in its session of 1911, and again in 1912, your committee is of the opinion that one of the necessary reforms in our law is an amendment providing that a case shall be reversed by the Supreme Court only when that Court is satisfied that the error on which the reversal is based affected the substantial rights of the appellant.

II

To amend the statutes so as to provide that an action to set aside the probate of a will must be brought within two years.

III

The probate of a will should be had upon notice and petition as in any ordinary action; objections to the will and to the probate thereof to be by answer.

IV

Persons related within the fourth degree should be disqualified to act in the capacity of guardian of property of minors.

V

In an action for damages based upon personal injuries, when a contingent fee is contracted for, such contract shall be presented to the court and receive the approval of the court before the action is commenced, and without such approval such contract shall be void.

VI

The interest of all distributees in an estate should be established by a final decree.

VII

Requests for instructions must be submitted to the court before argument begins. All exceptions to instructions given or refused must be taken before they are read to the jury. No exception, unless so taken, will be considered on a motion for new trial, or by the Supreme Court.

VIII

In all actions for divorce, if the defendant does not appear either in person or by attorney, the court must appoint the county attorney or some other attorney to investigate the case on behalf of the State, and it shall be the duty of such attorney so appointed to investigate the case carefully, to discover if fraud or collusion exists between the parties, and by answer to report his finding to the court; a fee of not less than ten nor more than fifty dollars in favor of such attorney to be taxed as costs in the case.

IX

When a party demurs to a pleading, thus raising an issue of law for the court, he should either stand upon the demurrer and appeal or waive the question submitted by the demurrer.

E. B. EVANS,
J. J. CLARK,
C. H. VAN LAW,
W. E. JOHNSTON,
A. N. HOBSON,
F. F. DAWLEY,
ROBERT HEALY,
Committee on Law Reform.

Mr. Dawley favors propositions II and V but is against the other propositions.

Mr. Clark favors all the propositions except IV.

Mr. Healy is opposed to propositions IV and V, does not fully favor VII, and is opposed to IX.

Mr. Van Law is against VII and IX.

I think there are one or two reforms that we ought, as a matter of conforming with our actions, unanimously adopt, and instead of calling this the Report of the Committee on Law Reform, we ought to designate it as the annual memorial service, by which we bury every proposition that is submitted to the Bar Association along the line of reform.

I am persuaded, after a careful study, having had occasion to go into the civil code procedure in this State every year from the beginning to the end, and to compare it frequently with the codes of procedure of other States, that there are few of the States that have as forcible, direct, and efficient codes of procedure as has the State of Iowa.

The Committee on Law Reform submits its report this year with the following sentence in the first paragraph: "We have deemed it prudent to submit this report for consideration and discussion by the Association without recommendations."

Some one suggested in my hearing that the committee was led to make the reports without recommendations because of the fear that some of its recommendations might not be approved. That was not the leading thought at all. Last year we succeeded in getting a part of one recommendation adopted and the legislature was persuaded to act in accordance with our recommendation, when some lawyer who had occasion to read the Constitution recently discovered that the question was unconstitutional. We submitted one question last year, with respect to non-partisan election without recommendation and that was almost passed by the legislature, so we conceived the idea of making this recommendation this year as we did.

The committee have not been able to hold a meeting at which all members were present. The report is largely brought about by correspondence. We have succeeded in getting a respectable minority of the committee to favor the recommendations. I think there were eighty-seven recommendations submitted to the committee. We have submitted nine herewith. As to the second and seventh recommendations, the legislature anticipated your approval and passed amendments in line therewith. As to the seventh, almost the entire suggestions are embraced in the law passed by the last General Assembly. As to the second recommendation "To amend the statute so as to provide that an action to set aside the probate of a will must be brought within two years," a statute was enacted bringing that down to one year. So I do not believe it will be necessary to consider these two propositions.

Coming now to the first recommendation of the committee,

there is an old adage that the third time is the charm. This is the third time this recommendation has been before the Association. I do not know that any member of the committee desires to discuss it. It is as follows:

Notwithstanding the negative action of this Association expressed in its session in 1911, and again in 1912, your committee is of the opinion that one of the necessary reforms in our law is an amendment providing that a case shall be reversed by the Supreme Court only when that Court is satisfied that the error on which the reversal is based affected the substantial rights of the appellant.

I move the adoption of the first recommendation. Duly seconded.

MR. J. L. KENNEDY: I move you that the first recommendation of the Committee on Law Reform be laid upon the table.

The motion was duly seconded and carried.

DEAN EVANS: Recommendation number two is as follows:

To amend the statutes so as to provide that an action to set aside the probate of a will must be brought within two years.

If there is no desire on the part of any member to discuss recommendation number two, that will be withdrawn, it having been incorporated in a recent statute.

Recommendation number three is as follows:

The probate of a will should be had upon notice and petition as in any ordinary action; objections to the will and to the probate thereof to be by answer.

It is intended to bring the probate procedure to the standard of procedure in other cases, so that the executor or any interested person desiring to bring about the probate of a will, will file a petition and serve notice.

I move the adoption of the third recommendation. Duly seconded.

MR. W. O. McELROY: I would like to know whether or not the new law, the adoption by the legislature of recommendation number two, indicates how notice is to be served and upon whom notice is to be served. The same question comes up in number three. I apprehend that if either of these or both shall be enact-

ed, there will be a question as to whether or not you have jurisdiction of the parties.

SENATOR C. H. VAN LAW: That provision I have here, as an amendment to section 3447, and is as follows:

After a will is probated the executor may cause personal service of an original notice to be made on any person interested, which shall contain the name of the decedent, the date of his death, the court in which and the date on which the will was probated, together with a copy of said will, and said notice shall be served in the same manner as an original notice, and no action shall be instituted by any person after one year from the date of the service.

MR. McELBOY: This will quiet title only as to those served and leaves the matter open for those not served. It seems to me it does not cover the field.

JUSTICE S. M. WEAVER: Suppose the executor has served notice upon all those parties prior to the probate of the will, under this provision does an heir or disappointed person still have a year in which to set it aside?

SENATOR VAN LAW: I can scarcely anticipate what the Supreme Court of Iowa will say about it.

JUSTICE WEAVER: If a party has once had proper notice to bring him into court, and he does not come, that ought to end the thing.

MR. D. T. STOCKMAN: It seems to me that this proposed change is very objectionable from the standpoint of the client; it may not be so objectionable to the attorney. In our district, and I assume in most districts in this State, there is an interim of some five or six months in each year in which we have no term of court. Under the practice as we have it now, a will may be admitted to probate upon the order of the court, and the amendment provides, if a person is not satisfied, he may have it set aside. But if a person should die at the time or about the time of the convening of the spring term of court, you have to give notice as provided for in an ordinary action, and then it must go over until the fall term. In the interim, if there is a personal estate, it is necessary to appoint a special administrator. In

other words, to contest is the exception, and the probate under the proceedings as we have it now is the final action in nine cases out of ten. If that is true, then the necessity of having this notice the same as notice in an ordinary action, and have a special administrator during that time, causes delay and additional expense and imposes an additional burden upon the people and the property of the estate.

MR. B. I. SALINGER: If I am correctly advised, the existing law is that the probate of a will is a proceeding *in rem*, that the notice provided is a notice *in rem*; that all parties interested are perforce concluded by the proceedings *in rem*; that five years is the limit of the period during which a probate may be set aside, and under the construction of the Gilruth case if there be personal appearance, there is no power in five years or any other period to set the proceedings aside. So that in the last analysis, under the present law, a title resting upon descent may be finally passed after five years from the time of the probate. The new proposition seeks to introduce notice *in personam*, binding only, of course, upon those who are thus served. No attempt is made to bind those who have not had their day in court, but those who have been personally served have only a year, if any time, to disturb the probate of the will. What troubles me is, how can any man tell how to serve notice *in personam* upon those who may be interested in the estate? The man who leaves the estate may be reputed to be a bachelor, and somewhere in the world there may be a wife and child. How can any one tell, if this proposition is passed, that the title has been settled by the probate. Why may there not at any time be an appearance of those who were not served, because no one knew they existed?

JUDGE J. J. CLARK: My recollection of the utterance of the Supreme Court on this question is that the present proceeding is not *in rem* but *in personam*, and it is only preliminary to the admission of a will to probate, as evidence of its being the will of the decedent, until an action is begun under the other section of the code to establish or contest it. It has been held under that provision that a person may come in and contest it, if he is an heir or interested in the estate, or an executor or administrator.

If he does do so, he is bound by it; if he does not do so, although he may have had notice of it, he is not bound by it, and he has a period of five years to commence a proceeding. Under these circumstances, it becomes necessary, as we looked at it, to settle the law on that subject, and perhaps this legislature has settled it. If everybody is served with notice, of course they are bound by it. If there are others interested, I think they are bound within a year instead of five years to settle the title to real property. If I am not mistaken, I think the decision was rendered by Justice Weaver or Justice Deemer. They can say whether I am correct in that construction or not, but in the construction of these two sections of the Code, I understand, while in some States it is regarded as a proceeding *in rem*, in this State it is regarded as a proceeding *in personam*, and they are bound by it.

MR. O. P. MYERS: As I understand it, for some years attorneys down in our section supposed when they had personal service it was sufficient to bar all contest, but under the late decision, as I understand it, it cuts no figure what form the notice is in, every heir has his five years to contest. It would seem to me the simplest form of disposing of the whole matter would be to cut down from the five years and make it *in rem*, to cover everybody.

SENATOR C. H. VAN LAW: The difficulty that arises under the present statute is simply this: A young lawyer is called upon to pass upon the merits of a title that rests upon a will as to which the five years limitation period has not run. He cannot anticipate what happens judicially and the purpose of this proposition is to cut off those who may be subsequently coming in to raise the question of the validity of the probate.

The motion to adopt the third recommendation was put to a vote of the members and declared lost.

DEAN EVANS: The fourth recommendation is as follows:

Persons related within the fourth degree should be disqualified to act in the capacity of guardian of property of minors.

As to this recommendation, I think the lawyers here who have had some experience in handling the estates of minors, where the

guardianship passed to the relatives, have found their greatest trouble was to keep the estate of minors from disappearing somewhere in the matter of expenses that ought to be borne by the parents. A young man, about twenty-three years old, came into my office and requested I should prepare a final report for his father as guardian. An estate of some two thousand dollars had been left by a relative. His father was guardian during six or seven years. The young man had anticipated the money and expected to engage in business. After gaining his majority he learned that the money was gone, and he brought the father into my office to prepare a report and the son ready to receipt for the money he never received. That is true a great many times. Those members of the committee who favored this fourth recommendation were of the opinion that a guardian outside of the relationship was an ample safeguard of the minor's interest and would justify the small expense.

I move the adoption of the report. (Duly seconded.)

MR. ROBERT HEALY: I move to amend the motion in the following manner: To lay indefinitely upon the table the fourth recommendation of this committee. I am unalterably opposed to such a measure and would regard as a calamity the passage of such a law. I believe, Mr. President, that it is not only the duty and the right, but the obligation rests upon the next of kin, not only to be guardian of the property, but also of the person of minors, and I have always advised my clients and always will, in the administration of probate affairs, and in the guardianship of minors, to keep the stranger away from the minor, and bring up to his defense and protection the next of kin.

The motion to lay on the table was duly seconded and carried.

DEAN EVANS: The fifth recommendation of the committee is as follows:

In an action for damages based upon personal injuries, when a contingent fee is contracted for, such contract shall be presented to the court and receive the approval of the court before the action is commenced, and without such approval such contract shall be void.

I move its adoption. (Duly seconded.)

MR. C. S. MACOMBER: I move to lay it on the table. (Duly seconded.)

My reason for so doing is, that I do not believe the bar of the State of Iowa has degenerated to that extent that they cannot be trusted to make contracts with their clients. When it goes out abroad that the bar themselves have such an opinion of themselves that they do not think they can make a contract with their clients unless it is approved by the court, if this convention passes that, I will move from the State of Iowa.

The motion to table was duly carried.

DEAN EVANS: Section six is as follows:

The interest of all distributees in an estate should be established by a final decree.

I move its adoption. (Duly seconded.)

A MEMBER: How is a final decree good and binding in an estate where there is no notice served by an executor, when he has had no notice?

MR. D. D. MURPHY: It seems to me that the greatest benefit to be derived from this is in cases where we have to deal with attorneys outside of the State. I find in my practice, they are always expecting a decree of final distribution. We have to do a great deal of explaining in order to cover that apparent defect.

JUSTICE WEAVER: In the State of Minnesota they have a statute such as is suggested here. When you examine an abstract of title of real estate in the State of Minnesota, you will find a final settlement or closing up of the estate, and a decree entered fixing the title, that is to say, that each shall have such and such a share. Now, I suppose those decrees have the value of being at least prima facie evidence of the settlement of the title. There may somebody else outside come in and move to set it aside, but it does have a very decided advantage of having a record showing a prima facie title in the devisees or the heirs of the deceased. I think the amendment is something the State has long needed.

JUDGE GEORGE JEPSON: They also have a similar law in South Dakota. Before the estate is finally closed there, notice is re-

quired, a decree defining the heirs and their distributive shares. I think this would be a very wholesome law. The final decree would show who the heirs are that are interested in the property. Of course, the heirs who had no notice would not be bound.

SENATOR C. G. SAUNDERS: It does seem to me if a law of that sort is adopted, it should be very carefully worded, because we have a five year limit in which letters of administration can be taken out. A great deal of property passes without there being any administration at all. It seems to me it ought not to be made the sole evidence of the descent of property.

The motion to adopt was duly carried.

DEAN EVANS: Section seven is as follows:

Requests for instructions must be submitted to the court before argument begins. All exceptions to instructions given or refused must be taken before they are read to the jury. No exception, unless so taken, will be considered on a motion for new trial, or by the Supreme Court.

Unless the members of the Association care to take it up, we will pass it, as it has been covered by a recent statute.

SENATOR C. H. VAN LAW: I want to go on record as being opposed to that section. I have heard the same expression from a great many lawyers here, with reference to the matter of requesting instructions. Under the present form of the statute, as adopted, if you are to ask instructions, you must ask them before the arguments begin or you are precluded subsequently from asking any instructions.

Section 2 reads: "All requests for instructions must be presented to the judge before the final argument to the jury is commenced and before the reading of the charge to the jury." The rest of it has reference to exceptions to instructions, which is equally reprehensible from the standpoint of a practicing lawyer. I do not believe it will be two years before this Association will go on record as against this law, because it will be considered prejudicial to the rights of the client.

THE PRESIDENT: The Chair is rather of the opinion that this discussion is out of order. There is nothing before the Association, as I understand it.

SENATOR C. H. VAN LAW: I move you that the matter of Section VII, relating to House File No. 158, be referred to the Committee on Law Reform subsequently to be appointed, for their special attention, and report at the next meeting.

The motion was duly seconded and carried.

DEAN EVANS: The eighth recommendation is as follows:

In all actions for divorce, if the defendant does not appear either in person or by attorney, the court must appoint the county attorney or some other attorney to investigate the case on behalf of the State, and it shall be the duty of such attorney so appointed to investigate the case carefully, to discover if fraud or collusion exists between the parties, and by answer to report his finding to the court; a fee of not less than ten nor more than fifty dollars in favor of such attorney to be taxed as costs in the case.

I move the adoption of this recommendation.

MR. ROBERT HEALY: I move that the eighth recommendation of the committee be laid upon the table.

The motion was duly seconded and carried.

DEAN EVANS: The ninth recommendation is as follows:

When a party demurs to a pleading, thus raising an issue of law for the court, he should either stand upon the demurrer and appeal or waive the question submitted by the demurrer.

I move its adoption.

MR. B. I. SALINGER: I move as an amendment to the pending motion that recommendation number nine be re-committed. (Duly seconded.)

I take this position, because I for one favor the principle embodied in the existing recommendation, at the same time I am constrained to feel, as written, it would be idle and fail of accomplishing its purpose. Secondly, in connection with the good it would do in any event, it would also tend in many instances to subvert the real administration of justice. The recommendation as written is right to this extent: There should be no place in an answer for an issue of law to permit one who has had a demurrer overruled, thereupon to plead in answer the same proposition embodied in his demurrer.

Let me illustrate: I today lay my petition and there is a demurrer. The demurrer is overruled. I am the successful party. I can not appeal from a ruling favorable to me. My adversary, finding me in that position, re-injects the law points that have just been ruled against him, and the only thing left for me is to try my case to a final end. It may take months of time and cost thousands of dollars, but I cannot find out until after that expensive trial has been had, and until the entire case, including the ruling on the demurrer, has gone to the Supreme Court, whether or not my petition ever did put me in court. Certainly some way ought to be found before the trial is proceeded with, where a point is seriously raised, to have that question determined before the trial on the merits is had. There is a clear analogy in that procedure in the Federal Courts, where the point is made as to a lack of jurisdiction. The moment that is done, an appeal may be taken directly to the Supreme Court of the United States to settle the question whether the plea of jurisdiction is or is not well taken.

I think the matter ought to be re-committed and the proposition should be, that if a demurrer is overruled, the party must then stand upon it and appeal from it or forever after waive it, unless the court in its discretion, thinking the demurrer is not frivolous, is authorized to stay proceedings and certify up the question involved in the demurrer before trial is had, and that the hearing as to time should proceed with the celerity now governing in cases of certiorari.

MR. W. A. HELSELL: It is hard enough to try a case once, without going to the Supreme Court three or four times. I apprehend, from the knowledge of my friend Salinger, if it were possible to demur to my petition to get a ruling, it would be a long time before I could get judgment.

Therefore, I move you, that the tail go with the hide, and that we lay the motion and amendment thereto on the table indefinitely.

The motion was duly seconded and carried.

DEAN EVANS: For a wonder, two of these sections have passed

the Association. So the committee reports that we are making progress.

THE PRESIDENT: We will now hear the Report of the Committee on Resolutions.

REPORT OF COMMITTEE ON RESOLUTIONS

Your Committee on Resolutions beg leave to report and recommend the adoption of the following resolutions:

Resolved, that a vote of thanks be extended to the Honorable Emory Speer, of Macon, Georgia, for the able and eloquent address delivered by him before this Association.

In this connection the Bar Association of Iowa takes the opportunity to express its full concurrence in the sentiment so happily and forcibly stated by Judge Speer in his address; that the absolute independence of the Judiciary of this country, State and Federal, is necessary to the maintenance of the rights and liberties of the people of this Nation. This Association further expresses its accord with the sentiment of such address, that the espionage of Judges of the Federal Courts, by other departments of the Government, is un-American, and highly detrimental to the proper administration of justice. That such practice tends to impair the confidence in the integrity of the Courts, to which they are justly entitled, the respect in which they are held by the people, and should receive the stamp of unqualified condemnation by the Bar of this country.

Be it further Resolved that a vote of thanks be extended by this Association to the local Bar of Woodbury County, the Commercial Club, Riverside Boat Club, Council Oak Boat Club, Commercial Men's Boat Club, T. O. T. S., the Elks Club, and the Hawkeye Club, and to the good citizens of Sioux City for the kind and courteous treatment and entertainment accorded the members of this Association while guests in the city.

Be it Resolved that a vote of thanks be extended generally to the persons who have read papers and responded to toasts during the meeting of the Association, because of the instruction and

entertainment given the members of the Association by such papers and responses.

Respectfully submitted,

C. G. SAUNDERS,
CHAS. W. MULLAN,
WESLEY MARTIN,
Committee.

Upon motion duly made the resolutions were adopted.

THE PRESIDENT: The Chair wishes to announce the appointment of the committee to examine the Torrens Land System and other systems of titles, to-wit: O. P. Meyers, Newton; E. G. Whitney, Sioux City; Chas. E. Scholz, Guttenberg; C. H. Van Law, Marshalltown; Jno. T. Clarkson, Albia.

MR. A. T. COOPER: I want to renew my motion now, of referring these delinquencies and dues to a committee of three to be appointed by the Chair, to take the matter up and settle with these men and report to the Association, if possible. I wish to renew that motion now and ask for a second.

MR. WESLEY MARTIN: I second the motion.

MR. COOPER: Briefly, there are one hundred and sixty members of this Association now in arrears for from three to eight years. They owe the Association about \$1600.00 or more. Some of them are splendid lawyers, some on the bench; some do not want to pay up the amount owing. They might have been dropped as members. I hope this committee on by-laws will pass upon a policy by which that element will be wiped out. It would be a great advantage to have this settled and start out with a clean sheet.

MR. C. R. METCALF: It seems to me most disgraceful to bring this matter up in convention. I think it is a disgrace to the Bar Association of Iowa that so many members have not even paid their dues, namely the sum of three dollars per year. It seems to me any lawyer in the State of Iowa can make three dollars a year to pay his dues if he wants to continue to be a member, or he had better quit practicing law. I do not like the impression

to go to the public that we are dead beats. It seems to me those members ought to be absolutely dropped, if they do not pay their dues, and thus stop this continual harassing and repetition of this matter to the disgust of all the members present.

MR. MARTIN: I think this same matter was brought up in the Des Moines meeting, and it resulted very satisfactorily. There was an adjustment made at that time of the delinquencies, and I think a great many were brought back. I do not think any harm could come out of it. We should adopt some means of getting this money.

MR. COOPER: There is nothing harsh about this. It is simply a matter of misunderstanding of our basic law. When these men understand that they are all to be treated alike, and the slate cleaned and a new start made, they will be very glad that it has been done. I think they will meet this committee ready to settle and ready to get back into the Association. I hope this measure may carry.

THE PRESIDENT: It should not be forgotten that the Treasurer has done his duty trying to collect these delinquent dues. I know he has written each man who is delinquent two or three times. No reflection should be cast upon him in the performance of his duties. It is simply due to the procrastination of the lawyers. I know it is a difficult problem and it should be taken hold of. I wanted it understood that our Treasurer has done his whole duty.

The motion was duly carried.

THE PRESIDENT: I will appoint as such committee: C. M. Dutcher, Iowa City; Frank T. Nash, Oskaloosa; H. C. Horack, Iowa City.

Is there any new business; has any one anything to suggest?

A MEMBER: I do not know whether any action can be taken—it is in regard to some recommendations or motions passed by the Association last year. There was one matter I remember distinctly was voted down, a recommendation by the Committee on Law Reform, on the question of majority verdicts. The merit

of the matter is not before us. This thing happened in the Legislature. A bill was introduced providing for majority verdicts. The bill went into the committee. One of the leading members of that committee did not know anything of the action taken by this Bar Association. The matter was called to his attention by a lay member of the committee. He read the debate, saw what action was taken by the Bar Association, but in spite of that went ahead, and the bill was passed by the House, but was killed in the Senate.

The point I want to make is this: Whether it wouldn't be wise for this Association to in some way see to it that at least the legal members in the legislature would know what was done by the Bar Association, and that they at least be informed and would not act contrary to the desires of the Association. I do not mean to say that they ought to be prevented from taking a stand. I do think the Association ought to have the moral persuasion at least. In this instance there was nothing done, though the action of this Association was entirely disregarded. Something ought to be done in that respect, or else all of our debates have no effect.

SENATOR C. G. SAUNDERS: I have been a member of that body known as the Iowa Legislature. I have found, in my experience, the worst thing you could say, was to suggest that the Bar Association was for or against something. I think the members of the Bar Association who have been members of the General Assembly have displayed their wisdom by keeping quiet about some things. I want to say further that our debates are of great force and effect. I have seen a great many recommendations turned down, and then two years later seen them enacted into law. I was convinced it was the education emanating from the debates of the State Bar Association that ultimately led to fruition at Des Moines.

PRESIDENT DEEMER: Gentlemen, I now have the great pleasure of presenting to you your new President, Hon. John F. Lacey.

PRESIDENT LACEY: Mr. President, and Gentlemen of the Iowa State Bar Association: It certainly is an honor to be elected

President of this Association, and succeed such a Chairman as has preceded me. This Association has done much good in the past; it has much good work ahead of it for the future.

At this hour it is no time to make an address, and I only want to say to you, I will give you the best service that I am capable of giving for the ensuing year, and hope to meet all of you that we have met at this very enjoyable gathering here at Sioux City, at the next meeting, which will be at the head of Lake Cooper, at Burlington, where we will have an opportunity to ride down the harnessed Mississippi and to see an institution creating 200,000 horse power distributed by wire all over every part of Iowa. One of the most wonderful things that has occurred within a century will be within our reach, and no doubt a part of the program will be a ride on that wonderful lake, harnessed by the hands of man. Gentlemen, I thank you.

I will announce the following committee appointments:

Legal Education and Admission to the Bar: Scott M. Ladd, Sheldon; Henry W. Dunn, Iowa City; F. W. Sargent, Des Moines; C. H. Van Law, Marshalltown; C. W. Mullan, Waterloo.

Grievances: E. C. Roach, Rock Rapids; F. F. Faville, Storm Lake; D. F. Stockman, Sigourney; E. M. Carr, Manchester; W. B. Quarton, Algona.

Legal Biography and History: C. J. Wilson, Washington; W. R. Lewis, Montezuma; J. H. Henderson, Indianola.

Law Reform: Wm. McNett, Ottumwa; M. J. Wade, Iowa City; R. M. Haines, Des Moines; Hazen I. Sawyer, Keokuk; Geo. Cosson, Audubon; C. W. Mullan, Waterloo; F. F. Faville, Storm Lake.

Constitution and By-Laws: A. T. Cooper, Cedar Rapids; H. E. Deemer, Red Oak; James A. Devitt, Oskaloosa.

PRESIDENT DEEMER: Before recognizing a motion to adjourn, I wish to express my thanks to each and every member of the Association for the assistance given me in making this meeting such a grand success. I feel that I may say that, because the suc-

cess is not due to myself alone, but to the hearty good will of every man. It has been a pleasant year, although somewhat burdensome, one of the pleasantest years of my life, which has culminated in one of the best meetings it has been my pleasure to attend. I thank you again, each and all, for your assistance in attaining this success.

Upon motion duly made the Association adjourned *sine die*.

CONSTITUTION AND BY-LAWS
OF
THE IOWA STATE BAR ASSOCIATION

CONSTITUTION

ARTICLE I

NAME

SECTION 1. This Association shall be known as the Iowa State Bar Association.

ARTICLE II

OBJECT

SECTION 1. This Association is formed to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standard of integrity, honor and courtesy in the legal profession, to encourage a thorough and liberal education, and to cherish a spirit of brotherhood among the members thereof.

ARTICLE III

MEMBERSHIP

SECTION 1. The membership of this Association shall be composed, first, of the charter members present at the organization as shown by the roll and paying the annual dues; and, second, members may be hereafter admitted to the Association on application to and recommendation by the Committee on Membership, provided the applicant be recommended for admission by either the County Bar Association of the applicant's county or by three members of this Association in good standing.

ARTICLE IV

OFFICERS

SECTION 1. The officers of this Association shall be a President, Vice-President, Secretary, Librarian, and Treasurer, who shall be elected at each annual meeting by ballot, without the intervention of a nominating committee, and who shall each hold office until his successor is elected and qualified.

SEC. 2. The members adopting this Constitution shall at once organize

by electing officers and an Executive Committee, as provided in Article V hereof, to serve until the first annual meeting hereafter to be held.

ARTICLE V

EXECUTIVE COMMITTEE

SECTION 1. The business of the Association shall be managed and controlled by an Executive Committee composed of the President, who shall be ex-officio Chairman, and eleven other members, one from each Congressional District, to be nominated by the members of this Association present from each Congressional District at each annual meeting.

SEC. 2. Any committee, standing or special, may consider and take action upon any matter of business pending before it, by correspondence; the vote being taken in writing and duly entered of record upon the minutes of such committee, and when so taken and entered shall stand as the act of the committee.

ARTICLE VI

STANDING COMMITTEES

SECTION 1. There shall be the following standing committees, who shall be elected by the Executive Committee, from the body of the Association, at their first meeting hereafter to be held and at their first meeting succeeding each annual meeting of this Association, to-wit:

First. On Membership, to be composed of such members as shall be provided in the By-Laws.

Second. On Grievances, to be composed of five.

Third. On Law Reform, to be composed of seven.

Fourth. On Legal Education and Admission to the Bar, to be composed of five.

Fifth. On Legal Biography, to be composed of three.

ARTICLE VII

FEES AND DUES

SECTION 1. The admission fee shall be three dollars (\$3), payable in advance, and to accompany the application for admission.

SEC. 2. The annual membership dues shall be three dollars (\$3), payable at each annual meeting, and if not paid within sixty days thereafter the membership may be forfeited, and the name of the delinquent shall not appear upon the published roll of membership.

SEC. 3. The payment of the admission fee shall relieve the member from further payment until the next annual meeting thereafter held.

ARTICLE VIII

ANNUAL MEETINGS

SECTION 1. The annual meeting shall be held at such time as the Executive Committee may determine. The annual meeting for 1895 shall be held in the city of Des Moines, but thereafter the place of meeting shall be selected by the Executive Committee.

ARTICLE IX**HONORARY DELEGATES**

SECTION 1. This Association will at any time admit as honorary delegates not exceeding two from the Bar Association of any county in the State, they to be entitled to all the privileges of membership at such meeting, with the exception of the right to vote and hold office.

ARTICLE X**BY-LAWS**

SECTION 1. The Executive Committee is charged with the duty of adopting appropriate By-Laws, not inconsistent herewith, for the government and control of the officers, committees and the business of the Association. These By-Laws shall be, however, subject to change by the Association at any regular meeting.

ARTICLE XI**AMENDING THE CONSTITUTION**

SECTION 1. This Constitution may be amended at an annual meeting by an affirmative vote of not less than two-thirds of all the members present, but can be amended by a majority vote when the proposed amendment has been submitted to the last preceding annual meeting of the Association.

BY - L A W S

RULE I**MEETINGS**

SECTION 1. The regular annual meetings of the Association shall be held at such time and place as shall be fixed by the Executive Committee and the place shall be announced by the Executive Committee before the adjournment of the annual meeting prior thereto.

QUORUM

SEC. 2. Twenty-five of the active members of the Association shall constitute a quorum for the transaction of business.

RULE II**ORDER OF BUSINESS**

SECTION 1. At the hour appointed for the annual meeting, the President, or in his absence the Vice-President, shall take the chair and the Secretary shall proceed to call the roll and note the members present. In the absence of both the President and Vice-President, the members present shall elect a President pro tempore as soon as the Secretary shall announce the presence of a quorum. Should no quorum attend within the hour appointed for the meeting, the members present shall fix a time for which the meeting shall stand adjourned.

SEC. 2. The order of business at the annual meeting shall be as follows:

First. Calling the roll of members.

Second. Presentation of petitions, letters, memorials, remonstrances and other papers which may be referred to appropriate committees and otherwise disposed of without debate.

Third. Report of Committee on Membership.

Fourth. Admission of Members.

Fifth. Address of President.

Sixth. Reports from other Standing Committees.

Seventh. Nomination and Election of Officers.

Eighth. Unfinished Business.

Ninth. New Business.

Tenth. Motions and Resolutions.

Eleventh. Annual address at such time as Executive Committee may determine, and other addresses, as arranged by program.

Twelfth. Banquet (evening of the first day).

RULE III

THE PRESIDENT

SECTION 1. The presiding officer shall rigidly enforce all rules adopted for the government of the Association, shall preserve order and decorum and in the debates shall prevent personal reflections and confine members to the question under discussion, countersign all orders of the Secretary upon the Treasurer, and appoint all committees whose election is not otherwise provided for.

RULE IV

THE SECRETARY

SECTION 1. The Secretary shall keep a full and complete list of the members and records of the proceedings of the Association and of the Executive Committee, draw orders upon the Treasurer for all sums of money ordered by the Association to be paid, give all persons elected written notice of the election, and attend to such other duties as may be imposed upon him at any meeting of the Association.

SEC. 2. The Secretary shall within ninety days after the close of each annual meeting, cause to be printed and published in book form such number of copies of the proceedings as the President and Secretary shall determine, containing a complete record of all the proceedings, including all papers presented to or read before the Association, all toasts given at the annual banquet, the reports of each and all officers and committees; the Constitution and By-Laws of the Association, with all amendments thereto in their proper places, a list of all the officers and members of the Association from the beginning, including the committees named at each meeting, and any other matters he may deem of sufficient importance to find a place in the volume.

He shall also make an accurate, complete, modern and thorough index of the proceedings, with cross references, etc., so that the matter contained in each volume may be rendered easily accessible; and preceding the index shall make and cause to be published a memorandum of all subjects referred to the committees, general and special, the subject of each and all of the annual addresses, giving author, and the subject and author of all papers read before the Association from its origin down to the time of the publication of the volume.

The same to be after the form and style of such memoranda as printed and published in the proceedings of the American Bar Association for the year 1898.

SEC. 3. In the published proceedings for the year 1901, he shall in addition to the regular index, make and publish a complete, accurate and thorough index, with usual cross references of all previous proceedings, giving volume or year and page of the proceedings where the matter referred to may be found.

SEC. 4. He shall receive in full compensation for services now or hereafter exacted of him, by by-law, rule, resolution, or vote of the Association, the sum of two hundred dollars per annum.

SEC. 5. All contracts for the publication of the proceedings shall be executed by the President and Secretary.

SEC. 6. Immediately on publication, the Secretary shall mail to each active member of the Association one copy of the proceedings; and the remainder shall be kept for sale and exchange. Exchanges may be made with such societies and organizations as the Executive Committee may direct; and the Executive Committee shall fix the price at which each volume may be sold.

SEC. 7. A Membership Committee consisting of eleven members of this Association shall be appointed by the President before or immediately after the adjournment of each annual meeting. No two members of the committee shall reside in the same Congressional District, and each member of said committee is hereby empowered to appoint in each county in his district a sub-committee of three resident lawyers to canvass for membership of this Association all resident members of the bar of such county, with power in each appointing body to remove for failure to perform the duties of the office.

RULE V

THE LIBRARIAN

SECTION 1. The Librarian shall receive from the Secretary all the printed literature of the Association, except a sufficient number of the proceedings of each year to distribute among the members of the Association, and shall preserve the same, and he is hereby directed to mail to each public library in the State of Iowa a copy of the proceedings of each year and to exchange proceedings with other Associations.

RULE VI**THE TREASURER**

SECTION 1. The Treasurer shall collect all moneys due the Association, keep correct accounts of the receipts and expenditures, and also an account with each member, pay all orders drawn by the Secretary and countersigned by the President, and make a full and correct report of the condition of the treasury to the Association at each annual meeting and at any other time when requested by the Executive Committee, and perform such other duties as the Association may require. He shall furnish a bond in such sum and on such conditions as the President and Secretary may prescribe, the cost of which shall be paid by the Association.

RULE VII**OFFICERS AND THEIR ELECTION**

SECTION 1. The President, Vice-President, Secretary, Treasurer and Executive Committee shall be elected at each annual session and hold their offices for one year and until their respective successors be duly elected.

SEC. 2. All elections for officers shall be by ballot, and a majority of the whole number of votes cast shall be requisite to the election of a candidate.

SEC. 3. Nominations shall be made to the annual meeting immediately preceding the time fixed for election.

SEC. 4. No member shall be entitled to vote at an election for officers until all arrears due by said member to the Association shall be paid.

RULE VIII**MEMBERS**

SECTION 1. No person shall be admitted to membership unless he is a member of the Bar of the State of Iowa, in good standing and has been recommended as by the Constitution of this Association provided.

SEC. 2. No person shall be considered a member unless he shall have signed the roll and paid into the hands of the Treasurer the annual dues provided by the Constitution.

SEC. 3. Any gentleman learned in the law may be elected to honorary membership in the same manner as is required in the election to active membership.

SEC. 4. Honorary members shall be entitled to all the privileges of active members, excepting serving on committees, voting and holding office.

RULE IX**STRIKING FROM THE ROLL**

SECTION 1. Any member who may be indebted to the Association in any sum shall receive written notice from the Treasurer, and if said member does not within two months after such notice pay his indebtedness, he shall be reported by the Treasurer to the President and Secretary and,

upon the concurrent action of a majority of such officers, he shall forfeit his membership, and shall be reinstated only upon the payment of all his indebtedness to the Association, and the concurrence of a majority of the members present at the annual meeting of the Association next following such settlement.

RULE X

COMMITTEES

SECTION 1. Besides the officers provided for in the charter, there shall be elected annually by the Executive Committee at the session immediately following such annual meeting, the following standing committees: Membership, Legal Education and Admission to the Bar, Grievances, Law Reform, Biography and History.

EXECUTIVE

SEC. 2. The President shall be ex-officio Chairman of the Executive Committee, which shall perform the duties in the manner specified in the charter. The Executive Committee shall annually select three persons, each of whom shall prepare and read at the annual meeting of this Association a paper upon subjects to be designated by the Executive Committee.

GRIEVANCES

SEC. 3. All complaints or charges of professional misconduct against any member shall in the first instance be made to this committee, who shall first investigate the same and report thereon. If such complaint or charges appear to be well founded this committee shall report to the Association what action in their judgment shall be taken thereon, whereupon the Association may, after a fair hearing, upon due notice to the accused, proceed to suspend or expel said member, and if the charge be such as comes in the summary jurisdiction of the courts, may order proceedings to be instituted and present the same against the party or parties accused, and shall appoint a committee of prosecution for each particular case.

LAW REFORM

SEC. 4. Any and all legislation proposed relative to the enactment of new laws or changes in those prevailing, shall be referred to this committee who shall examine and report its action upon the case.

LEGAL BIOGRAPHY AND HISTORY

SEC. 5. This committee shall receive all papers referred to them and shall collect all data obtainable touching the past history of the Bar of Iowa and the members thereof, arrange the same in order for publication, and report the same to the Association for its further order and action.

THE MARSHAL

SEC. 6. The Executive Committee shall appoint a Marshal, who shall,

under the general control of the President, assist in preserving order and perform the duties of a sergeant-at-arms of a deliberative body.

AUDITING

SEC. 7. The President shall at least ten days prior to each annual meeting, appoint an Auditing Committee of three members, at least two of whom shall be residents of the town or city where the Treasurer resides. To this committee shall be referred all reports of officers, and it shall be its duty to examine all books of accounts, vouchers and other matters relating to the financial management and condition of the Association.

RULE XI

RULES OF ORDER

SECTION 1. No motion, resolution or amendment (except to postpone, to lay on the table, or refer to a committee) shall be debatable unless offered in writing, seconded and stated by the President; and after it has been debated the President shall again state it before any vote shall be taken upon it.

SEC. 2. Unless specified, Roberts' Rules of Order shall be the guide and authority, when applicable, on all questions arising in the Association.

SEC. 3. All recommendations of the Committee on Law Reform shall be in writing and filed with the Secretary at least three weeks prior to the regular annual meeting. The Secretary shall thereupon cause same to be printed at the expense of the Association, and at least ten days prior to said annual meeting he shall send one printed copy of said recommendations to each and every member of the Association. No report not so filed and distributed, nor any part thereof, shall be considered and adopted unless by unanimous consent of all members present and voting on the proposition.

RULE XII

THE BY-LAWS

SECTION 1. Any article or section of the By-Laws may be temporarily suspended by a unanimous vote of the members present.

SEC. 2. By-Laws may be enacted, amended or repealed by a majority vote of the members present at any regular meeting.

RULE XIII

SECTION ON TAXATION

SECTION 1. There is hereby created a Section on Taxation, such Section to consist of six members, two of whom shall be annually appointed by the Executive Committee to serve for three years, together with such other members of the Association as may identify themselves with said Section to aid the work thereof. Of those first appointed under this rule, two shall be appointed for one year, two for two years and two for three years each.

SEC. 2. Said Section will immediately upon its appointment organize by electing from the six members so appointed the following officers: President, Vice-President and Secretary, the duties of which shall be those usually performed by such officers.

SEC. 3. Said Section shall have a meeting annually in connection with the annual meeting of this Association, and as a part of the same, and in the arrangement of the program of the Association a definite time, not exceeding one morning or afternoon session, shall be set apart to the proceedings of this Section, and at such time the meeting will be presided over by the President of this Section.

SEC. 4. By the concurrent action of the President of the Section and at least a majority of the Executive Committee of the Association, this Section shall be authorized to expend such sums of money as may reasonably appear to be necessary in collecting statistics, conducting investigation or in any other manner aiding the work of the Section.

SEC. 5. The proceedings of this Section shall be published under an appropriate heading and as a part of the proceedings of this Association.

**LIST OF OFFICERS
AND MEMBERS OF THE VARIOUS COMMITTEES
SINCE THE ORGANIZATION OF
THE IOWA STATE BAR ASSOCIATION**

1894

Temporary Chairman.....EMLIN MCCLAIN, *Iowa City*
Temporary Secretary.....JAMES W. BOLLINGER, *Davenport*

1895

President.....A. J. MCCRAY, *Keokuk*
Vice-President.....L. G. KINNE, *Des Moines*
Secretary.....JAMES W. BOLLINGER, *Davenport*
Treasurer.....JOHN N. BALDWIN, *Council Bluffs*

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. B. Bane, New Hampton; Fifth District, D. E. Voris, Marion; Sixth District, L. C. Blanchard, Oakaloosa; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, D. C. Chase, Webster City; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Geo. W. Wakefield, Sioux City; H. O. Weaver, Wapello.

Legal Biography.—George G. Wright, Des Moines; H. S. Winalow, Newton; N. M. Hubbard, Cedar Rapids.

To Prepare By-Laws.—A. J. McCrary, Keokuk; E. S. Huston, Burlington; L. C. Blanchard, Oakaloosa.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Rose, Jefferson; T. B. Perry, Albion; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Auditing.—M. J. Wade, Iowa City; E. S. Huston, Burlington; Thomas A. Cheshire, Des Moines.

1896

President.....	L. G. KINNE, <i>Des Moines</i>
Vice-President.....	J. H. HENDERSON, <i>Indianola</i>
Secretary.....	JAMES W. BOLLINGER, <i>Davenport</i>
Treasurer.....	GEORGE F. HENBY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. O. Weaver, Wapello; Second District, M. J. Wade, Iowa City; Third District, C. E. Pickett, Waterloo; Fourth District, J. E. Bane, New Hampton; Fifth District, George W. Burnham, Vinton; Sixth District, H. S. Winslow, Newton; Seventh District, James G. Day, Des Moines; Eighth District, L. C. Mechem, Centerville; Ninth District, P. L. Sever, Stuart; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—George G. Wright, Des Moines; H. S. Winslow, Des Moines; N. M. Hubbard, Cedar Rapids.

Constitution and By-Laws.—Charles M. Harl, Council Bluffs; Milton Remley, Iowa City; C. H. Hatch.

Law Reform.—A. B. Cummins, Des Moines; J. J. Tollerton, Cedar Falls; Samuel Hayes, Iowa City; Perry D. Rose, Jefferson; T. B. Perry, Albia; J. H. Henderson, Indianola; Craig L. Wright, Sioux City.

Membership.—C. L. Nourse, Des Moines; Jacob Sims, Council Bluffs; D. C. Chase, Webster City.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; W. A. Park, Des Moines; T. C. Dawson, Council Bluffs; J. T. Illick, Burlington.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; James G. Day, Des Moines.

1897

President.....	J. H. HENDERSON, <i>Indianola</i>
Vice-President.....	M. J. WADE, <i>Iowa City</i>
Secretary.....	NATHAN E. COFFIN, <i>Des Moines</i>
Treasurer.....	GEORGE F. HENBY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, Charles D. Leggett, Fairfield; Second District, E. M. Sharon, Davenport; Third District, J. J. McCarthy, Dubuque; Fourth District, J. H. McConlogue, Mason City; Fifth District, George W. Burnham, Vinton; Sixth District, Chas. R. Clark, Montezuma; Seventh District, John Shortley, Perry; Eighth District, L. C. Mechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Craig L. Wright, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello; Geo. W. Wakefield, Sioux City.

Legal Biography.—H. S. Winalow, Newton; C. C. Nourse, Des Moines; A. J. McCrary, Keokuk.

Constitution and By-Laws.—Milton Remley, Iowa City; James W. Bolinger, Davenport; T. M. Fee, Centerville.

Law Reform.—A. B. Cummins, Des Moines; John Cliggett, Mason City; L. C. Blanchard, Oskaloosa; J. H. Preston, Cedar Rapids; P. W. Burr, Charles City; C. A. Carpenter, Columbus Junction; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. A. Park, Des Moines; M. J. Tobin, Vinton.

Grievances.—Lewis Miles, Corydon; Anthony C. Daly, Marshalltown; P. L. Sever, Stuart; C. G. Saunders, Council Bluffs; W. J. Roberts, Keokuk.

Delegates to American Bar Association.—L. G. Kinne, Des Moines; Emlin McClain, Iowa City; J. H. McConlogue, Mason City.

Program.—E. H. Crocker, Cedar Rapids; M. J. Wade, Iowa City; F. W. Eichelberger, Bloomfield.

1898

President.....	M. J. WADE, Iowa City
Vice-President.....	JAMES O. CROSBY, Garnaville
Secretary.....	NATHAN E. COFFIN, Des Moines
Treasurer.....	GEORGE F. HENRY, Des Moines

COMMITTEES

Executive.—First District, W. J. Roberts, Keokuk; Second District, James H. Feenan, Marengo; Third District, J. A. Rogers, Clarion; Fourth District, Wm. E. Fuller, West Union; Fifth District, E. H. Crocker, Cedar Rapids; Sixth District, Charles B. Clark, Montezuma; Seventh District, J. H. Henderson, Indianola; Eighth District, L. C. Meechem, Centerville; Ninth District, E. W. Weeks, Guthrie Center; Tenth District, J. A. Henderson, Jefferson; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winalow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. C. Blanchard, Oskaloosa; J. P. Steele, Winterset; C. A. Carpenter, Columbus Junction; J. H. Preston, Cedar Rapids; T. G. Harper, Burlington; R. F. Jordan, Boone; Samuel Hayes, Iowa City.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—Lewis Miles, Corydon; C. E. Albrook, Eldora; Wm. H. Bailly, Des Moines; C. G. Saunders, Council Bluffs; J. J. McCarthy, Dubuque.

Delegates to American Bar Association.—H. E. Deemer, Red Oak; C. A. Dudley, Des Moines; J. M. Parsons, Rock Rapids.

Program.—J. E. E. Markley, Mason City; W. B. Quarton, Algona; W. D. Evans, Hampton.

 1899

President.....	JAMES O. CROSBY, <i>Garnaville.</i>
Vice-President.....	L. C. BLANCHARD, <i>Oskaloosa</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, H. M. Eichler, Washington; Second District, G. L. Johnson, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Ellison, Anamosa; Sixth District, David Ryan, Newton; Seventh District, J. P. Steele, Winterset; Eighth District, L. C. Mechem, Centerville; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; H. O. Weaver, Wapello.

Legal Biography.—H. S. Winalow, Newton; David Ryan, Newton; A. J. McCrary, Keokuk.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. C. Mabry, Centerville; E. S. Huston, Burlington; J. B. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—Robert M. Haines, Grinnell; W. L. Read, Des Moines; George C. Scott, Le Mars.

Grievances.—J. J. McCarthy, Dubuque; A. J. House, Maquoketa; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—Alphonse Matthews, Dubuque; J. H. Henderson, Indianola; W. B. Quarton, Algona.

Program.—J. H. Quick, Sioux City; J. E. E. Markley, Mason City; E. C. Roach, Rock Rapids.

 1900

President.....	L. C. BLANCHARD, <i>Oskaloosa</i>
Vice-President.....	J. J. MCCARTHY, <i>Dubuque</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	GEORGE F. HENRY, <i>Des Moines</i>

COMMITTEES

Executive.—First District, E. S. Huston, Burlington; Second District, Fred Heins, Davenport; Third District, C. W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, F. O. Elliman, Anamosa; Sixth District, Robert M. Haines, Grinnell; Seventh District, C. P. Holmes, Des Moines; Eighth District, J. C. Mabry, Centerville; Ninth District, Thomas Arthur, Logan; Tenth District, Wesley Martin, Webster City; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—M. W. Beach, Carroll; John Shortley, Perry; Perry D. Rose, Jefferson.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. P. Lyman, Grinnell; E. S. Huston, Burlington; J. A. Whitaker, Boone; E. M. Sharon, Davenport.

Membership.—George C. Scott, Le Mars; Charles Baker, Iowa City; J. M. Read, Des Moines.

Grievances.—A. J. House, Maquoketa; L. L. Livingston, Corydon; D. D. Murphy, Elkader; C. W. Bingham, Cedar Rapids; F. C. Platt, Waterloo.

Delegates to American Bar Association.—George W. SeEVERS, Oskaloosa; J. C. Sherwin, Mason City; James O. Crosby, Garnaville.

Program.—A. E. Swisher, Iowa City; J. H. Preston, Cedar Rapids; Robert M. Haines, Grinnell.

 1901

President.....J. J. MCCARTHY, *Dubuque*
 Vice-President.....J. H. MCCONLOGUE, *Mason City*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, S. F. Smith, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. A. Hoyt, Fayette; Fifth District, J. H. Preston, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. D. Gamble, Knoxville; Eighth District, J. C. Mabry, Centerville; Ninth District, H. W. Byers, Harlan; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; L. G. Kinne, Des Moines; George F. Henry, Des Moines; Thomas A. Cheshire, Des Moines; Samuel Hayes, Iowa City.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—H. E. Deemer, Red Oak; J. A. Rogers, Clarion; E. M. Sharon, Davenport.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. K. Evans, Corydon.

Membership.—Jacob Sims, Council Bluffs; M. W. Beach, Carroll; E. M. Carr, Manchester.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; E. M. Carr, Manchester; Erastus B. Soper, Emmetsburg; Wm. E. Fuller, West Union.

Delegates to American Bar Association.—E. E. McElroy, Ottumwa; L. C. Blanchard, Oakaloosa; C. C. Cole, Des Moines.

Program.—C. G. Saunders, Council Bluffs; H. W. Byers, Harlan.

1902

President.....J. H. McCONLOGUE, *Mason City*

Vice-President.....ROBERT M. HAINES, *Grinnell*

Secretary.....SAM S. WRIGHT, *Tipton*

Treasurer.....GEORGE F. HENBY, *Des Moines*

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, C. M. Brown, Sigourney; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, Ernest Kelley, Emmetsburg; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Geo. Dunham, Manchester; George F. Henry, Des Moines.

Legal Biography.—Geo. W. Wakefield, Sioux City; John Cliggett, Mason City; T. M. Fee, Centerville.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville; H. M. Remley, Anamosa.

Membership.—J. J. McCarthy, Dubuque; M. W. Beach, Carroll; C. W. Mullan, Waterloo.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; L. L. Ainsworth, West Union; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—A. E. Swisher, Iowa City; J. H. McConlogue, Mason City; W. L. Eaton, Osage.

Program.—J. H. McConlogue, Mason City; E. M. Carr, Manchester; J. C. Longueville, Dubuque; M. C. Matthews, Dubuque.

1903

President.....ROBERT M. HAINES, *Grinnell*
 Vice-President.....GEO. W. WAKEFIELD, *Sioux City*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....GEORGE F. HENRY, *Des Moines*

COMMITTEES

Executive.—First District, J. C. Davis, Keokuk; Second District, P. B. Wolfe, Clinton; Third District, S. M. Weaver, Iowa Falls; Fourth District, W. L. Eaton, Osage; Fifth District, C. W. Bingham, Cedar Rapids; Sixth District, E. E. McElroy, Ottumwa; Seventh District, J. H. Henderson, Indianola; Eighth District, H. K. Evans, Corydon; Ninth District, Shirley Gilliland, Glenwood; Tenth District, A. N. Boeye, Webster City; Eleventh District, E. C. Roach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; H. E. Deemer, Red Oak; C. C. Cole, Des Moines; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; E. M. Sharon, Davenport; C. P. Holmes, Des Moines.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; James O. Crosby, Garnaville.

Membership.—Wm. H. Bailly, Des Moines; J. P. Lyman, Grinnell; C. G. Saunders, Council Bluffs.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; J. J. Clark, Mason City; Erastus B. Soper, Emmetsburg.

Delegates to American Bar Association.—M. J. Wade, Iowa City; W. L. Eaton, Osage; H. M. Remley, Anamosa.

Program.—Robert M. Haines, Grinnell; J. P. Steele, Winterset; C. A. Bishop, Des Moines.

Commission on Taxation.—Charles A. Clark, Cedar Rapids; C. G. Saunders, Council Bluffs.

1904

President.....GEO. W. WAKEFIELD, *Sioux City*
 Vice-President.....A. E. SWISHER, *Iowa City*
 Secretary.....SAM S. WRIGHT, *Tipton*
 Treasurer.....JESSE F. STEVENSON, *Des Moines*

COMMITTEES

Executive.—First District, H. M. Eicher, Washington; Second District, Fred Heinz, Davenport; Third District, S. M. Weaver, Iowa Falls; Fourth District, H. T. Reid, Cresco; Fifth District, J. M. Grimm, Cedar Rapids;

Sixth District, E. E. McElroy, Ottumwa; Seventh District, Wm. H. Baily, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, Carl F. Kuehnle, Denison; Eleventh District, E. C. Roach, Rock Rapids.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—John Cliggett, Mason City; T. M. Fee, Centerville; James W. Bollinger, Davenport.

Constitution and By-Laws.—J. A. Rogers, Clarion; J. F. Clyde, Osage; William E. Miller, Bedford.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Bemley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—M. A. Roberts, Ottumwa; Wm. H. Baily, Des Moines; J. P. Lyman, Grinnell.

Grievances.—F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; W. B. Quarton, Algona; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—C. A. Dudley, Des Moines; E. M. Carr, Manchester; W. B. Quarton, Algona.

Program.—Geo. W. Wakefield, Sioux City; W. S. Withrow, Mount Pleasant; E. E. McElroy, Ottumwa.

Commission on Taxation.—J. H. McConlogue, Mason City; J. C. Mabry, Centerville.

1905

President.....	A. E. SWISHER, <i>Iowa City</i>
Vice-President.....	WM. H. BAILY, <i>Des Moines</i>
Secretary.....	SAM S. WRIGHT, <i>Tipton</i>
Treasurer.....	JESSE F. STEVENSON, <i>Des Moines</i>

COMMITTEES

Executive.—First District, W. M. Walker, Keosauqua; Second District, John F. Devitt, Muscatine; Third District, S. M. Weaver, Iowa Falls; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, E. E. McElroy, Ottumwa; Seventh District, C. A. Dudley, Des Moines; Eighth District, P. C. Preston, Creston; Ninth District, C. E. Dean, Glenwood; Tenth District, E. V. Swetting, Algona; Eleventh District, Geo. W. Wakefield, Sioux City.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; George F. Henry, Des Moines.

Legal Biography.—George W. Wakefield, Sioux City; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Constitution and By-Laws.—J. A. Rogers, Clarion; B. A. Yonker, Des Moines; Wm. McNett, Ottumwa.

Law Reform.—L. G. Kinne, Des Moines; M. J. Wade, Iowa City; H. M. Remley, Anamosa; J. H. Henderson, Indianola; E. S. Huston, Burlington; Charles A. Clark, Cedar Rapids; H. M. Towner, Corning.

Membership.—Wm. H. Baily, Des Moines; M. A. Roberts, Ottumwa; J. P. Lyman, Grinnell.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk.

Delegates to American Bar Association.—Geo. W. Wakefield, Sioux City; James W. Bollinger, Davenport; M. A. Roberts, Ottumwa.

Program.—C. A. Dudley, Des Moines; A. E. Swisher, Iowa City; George F. Henry, Des Moines.

Commission on Taxation.—E. E. McElroy, Ottumwa; James C. Davis, Des Moines.

Delegates to the World's Congress of Lawyers at St. Louis, Mo.—At Large, S. M. Weaver, Iowa Falls; At Large, H. M. Towner, Corning; First District, H. M. Eicher, Washington; Second District, Wm. Hoffman, Muscatine; Third District, J. J. McCarthy, Dubuque; Fourth District, James O. Crosby, Garnaville; Fifth District, J. L. Carney, Marshalltown; Sixth District, L. C. Blanchard, Oakalocsa; Seventh District, C. C. Cole, Des Moines; Eighth District, H. K. Evans, Corydon; Ninth District, H. E. Deemer, Red Oak; Tenth District, E. A. Morling, Emmetsburg; Eleventh District, Scott M. Ladd, Sheldon.

1906

President.....WM. H. BAILY, *Des Moines*
 Vice-President.....H. M. TOWNER, *Corning*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....JESSE F. STEVENSON, *Des Moines*

COMMITTEES

Executive.—W. H. Baily, ex-officio chairman; First District, W. M. Keeley, Washington; Second District, J. F. Devitt, Muscatine; Third District, Charles W. Mullan, Waterloo; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. W. Willett, Tama; Sixth District, W. G. Clements, Newton; Seventh District, Carroll Wright, Des Moines; Eighth District, William E. Crum, Bedford; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, J. E. Wickham, Garner; Eleventh District, F. F. Faville, Storm Lake.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; William E. Miller, Bedford.

Law Reform.—Charles A. Clark, Cedar Rapids; H. M. Remley, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; R. M. Wright, Ft. Dodge; James W. Bollinger, Davenport.

Membership.—C. L. Powell, Des Moines; W. J. Roberts, Keokuk; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—Charles A. Dudley, Des Moines; J. H. McConlogue, Mason City; M. J. Wade, Iowa City.

Commission on Taxation.—J. H. McConlogue, Mason City (elected 1903); J. C. Mabry, Centerville (elected 1903); E. E. McElroy, Ottumwa (elected 1904); James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905).

1907

President.....H. M. TOWNER, *Corning*
 Vice-President.....D. D. MURPHY, *Elkader*
 Secretary.....CHARLES M. DUTCHER, *Iowa City*
 Treasurer.....CHARLES S. WILCOX, *Des Moines*

COMMITTEES

Executive.—H. M. Towner, ex-officio chairman; First District, C. A. Carpenter, Columbus Junction; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, J. H. McConlogue, Mason City; Fifth District, J. L. Carney, Marshalltown; Sixth District, W. B. Lewis, Montezuma; Seventh District, C. G. Lee, Ames; Eighth District, W. E. Miller, Bedford; Ninth District, Henry B. Holsman, Guthrie Center; Tenth District, Wesley Martin, Webster City; Eleventh District, M. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnaville; P. B. Wolfe, Clinton; E. M. Sharon, Davenport.

Law Reform.—James W. Bollinger, Davenport; Charles A. Clark, Cedar Rapids; H. M. Remley, Anamosa; M. J. Wade, Iowa City; J. H. Henderson, Indianola; W. D. Evans, Hampton; B. M. Wright, Ft. Dodge.

Membership.—C. S. Grilk, Davenport; C. L. Powell, Des Moines; J. W. Hallam, Sioux City.

Grievances.—W. B. Quarton, Algona; F. C. Platt, Waterloo; C. W. Bingham, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa.

Delegates to American Bar Association.—W. H. Bailly, Des Moines; A. E. Swisher, Iowa City; M. A. Walsh, Clinton.

Commission on Taxation.—James C. Davis, Des Moines (elected 1904); Charles A. Clark, Cedar Rapids (elected 1905); C. G. Saunders, Council Bluffs (elected 1905); W. O. McElroy, Newton (elected to fill unexpired term of E. E. McElroy who was elected in 1904); C. P. Smith, Mason City (elected 1906); A. B. Wells, Corning (elected 1906).

1908

President.....	D. D. MURPHY, <i>Elkader</i>
Vice-President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—D. D. Murphy, ex-officio chairman; First District, Charles J. Wilson, Washington; Second District, J. F. Devitt, Muscatine; Third District, E. M. Carr, Manchester; Fourth District, A. N. Hobson, West Union; Fifth District, James H. Crosby, Cedar Rapids; Sixth District, Henry Silwold, Newton; Seventh District, E. L. Parrish, Des Moines; Eighth District, Thomas L. Maxwell, Creston; Ninth District, Charles M. Harl, Council Bluffs; Tenth District, Carl F. Kuehne, Denison; Eleventh District, W. W. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; C. C. Cole, Des Moines; H. E. Deemer, Red Oak; Wm. Hoffman, Muscatine; Charles Noble Gregory, Iowa City.

Legal Biography.—James O. Crosby, Garnavillo; P. B. Wolfe, Clinton; W. R. Lewis, Montezuma.

Law Reform.—M. J. Wade, Iowa City; George W. Dunham, Manchester; J. L. Carney, Marshalltown; H. M. Remley, Anamosa; J. H. Henderson, Indianola; W. D. Evans, Hampton; C. A. Dudley, Des Moines.

Membership.—F. C. Platt, Waterloo; Charles Grilk, Davenport; C. L. Powell, Des Moines.

Grievances.—W. B. Quarton, Algona; E. H. Crocker, Cedar Rapids; Hazen I. Sawyer, Keokuk; M. A. Roberts, Ottumwa; Wesley Martin, Webster City.

Delegates to the American Bar Association.—H. M. Towner, Corning; E. M. Sharon, Davenport; Shirley Gilliland, Glenwood.

Program.—D. D. Murphy, Elkader; H. M. Towner, Corning; James W. Bollinger, Davenport.

Uniform Laws.—Charles G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; William H. Baily, Des Moines; A. E. Swisher, Iowa City; L. C. Blanchard, Oakaloosa.

1909

President.....	JAMES W. BOLLINGER, <i>Davenport</i>
Vice-President.....	CHARLES M. HARL, <i>Council Bluffs</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>

COMMITTEES

Executive.—J. W. Bollinger, ex-officio chairman; First District, Marsh W. Bailey, Washington; Second District, A. J. House, Maquoketa; Third District, C. W. Mullan, Waterloo; Fourth District, Charles E. Scholz, Gut

tenberg; Fifth District, J. L. Carney, Marshalltown; Sixth District, M. A. Roberts, Ottumwa; Seventh District, J. K. Macomber, Des Moines; Eighth District, Lloyd Thurston, Osceola; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, Dwight G. McCarty, Emmetsburg; Eleventh District, W. P. Briggs, Sheldon.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Charles Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. R. Lewis, Montezuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; J. L. Carney, Marshalltown; H. O. Weaver, Wapello; Wm. McNett, Ottumwa; J. A. Howe, Des Moines; C. W. Mullan, Waterloo; H. K. Evans, Corydon.

Membership.—J. H. Egermayer, Marshalltown; J. K. Macomber, Des Moines; O. B. Courtright, Waterloo.

Grievances.—H. M. Towner, Corning; J. D. Gamble, Knoxville; J. C. Mabry, Centerville; W. B. Quarton, Algona; W. B. Green, Audubon.

Delegates to American Bar Association.—D. D. Murphy, Elkader; J. F. Devitt, Muscatine; Henry Vollmer, Davenport.

1910

President.....	CHARLES M. HARL, <i>Council Bluffs</i>
Vice-President.....	J. L. CARNEY, <i>Marshalltown</i>
Secretary.....	CHARLES M. DUTCHER, <i>Iowa City</i>
Treasurer.....	CHARLES S. WILCOX, <i>Des Moines</i>
Librarian.....	A. J. SMALL, <i>Des Moines</i>

COMMITTEES

Executive.—C. M. Harl, Council Bluffs, ex-officio chairman; First District, Hazen I. Sawyer, Keokuk; Second District, J. F. Devitt, Muscatine; Third District, A. J. Edwards, Waterloo; Fourth District, D. D. Murphy, Elkader; Fifth District, J. W. Willett, Tama City; Sixth District, H. G. Lyman, Grinnell; Seventh District, Jesse A. Miller, Des Moines; Eighth District, C. J. Lewis, Mt. Ayr; Ninth District, C. G. Saunders, Council Bluffs; Tenth District, W. W. Goodykoontz, Boone; Eleventh District, W. M. White, Ida Grove.

Legal Education and Admission to the Bar.—Emlin McClain, Iowa City; Chas. Noble Gregory, Iowa City; Wm. Hoffman, Muscatine; E. B. Evans, Des Moines; J. H. McConlogue, Mason City.

Legal Biography.—D. J. Murphy, Waukon; W. R. Lewis, Montezuma; P. B. Wolfe, Clinton.

Law Reform.—H. E. Deemer, Red Oak; Jesse A. Miller, Des Moines; Wm. McNett, Ottumwa; J. L. Carney, Marshalltown; J. J. Clark, Mason City; L. H. Harpel, Boone; W. P. Briggs, Sheldon.

Grievances.—H. M. Towner, Corning; T. S. Stevens, Hamburg; H. E. Taylor, Waukon; Chas. S. Bradshaw, Des Moines; W. D. Milligan, Guthrie Center.

Uniform Laws.—Chas. G. Saunders, Council Bluffs; Horace E. Deemer, Red Oak; M. J. Wade, Iowa City; Wm. H. Baily, Des Moines; C. J. Wilson, Washington.

Program.—C. M. Harl, Council Bluffs; J. W. Bollinger, Davenport; J. L. Carney, Marshalltown.

Delegates to American Bar Association.—J. W. Bollinger, Davenport; S. M. Weaver, Iowa Falls; W. D. Milligan, Guthrie Center.

 1911

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Legal Biography.—C. J. Wilson, Washington; W. R. Lewis, Montezuma.

Law Reform.—E. B. Evans, Des Moines; J. J. Clark, Mason City; M. A. Roberts, Ottumwa; C. H. Van Law, Marshalltown; E. W. Weeks, Guthrie Center; Carroll Wright, Des Moines; A. N. Hobson, West Union.

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Uniform Laws.—N. D. Ely, Davenport; J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Charles S. Bradshaw, Des Moines; Glen Brown, Dubuque.

Section on Taxation.—J. H. McConlogue, Mason City; Charles A. Clark, Cedar Rapids; John T. Clarkson, Albia; J. C. Mabry, Centerville; Wesley Martin, Webster City; Frank O'Connor, New Hampton.

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Uniform Laws.—N. D. Ely, Davenport; J. L. Carney, Marshalltown; C. G. Saunders, Council Bluffs; Charles S. Bradshaw, Des Moines; Glen Brown, Dubuque.

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Constitution and By-Laws.—A. T. Cooper, Cedar Rapids; H. E. Deemer, Red Oak; J. A. Devitt, Oskaloosa.

Delinquencies and Dues.—C. M. Dutcher, Iowa City; Frank T. Nash, Oskaloosa; H. C. Horack, Iowa City.

Torrens or Other Systems of Land Titles.—O. P. Myers, Newton; E. G. Whitney, Sioux City; Chas. E. Scholz, Guttenberg; C. H. Van Law, Marshalltown; John T. Clarkson, Albia.

ANNUAL ADDRESSES

1895. L. G. KINNE—"How the Supreme Court Disposes of Cases."
1896. JOHN BARTON PAYNE—"The Legal Profession. Its Opportunities and Obligations."
1897. JOHN GIBBONS—"Security Under the Law is the Shaft and Shield of the Republic."
1898. H. C. TOMPKINS—No address.
1899. J. H. McONLOGUE—"The American Lawyer: his Obligations and Opportunities."
1900. JOHN L. WEBSTER—"Has the United States a Duty and a Destiny to Fulfil in China?"
1901. SMITH McPHERSON—"The Recent Insular Tariff Decisions by the Supreme Court of the United States."
1902. PAUL E. CARPENTER—"Some of the Legal Phases of Insanity."
1903. DAVID J. BREWER—"The Triumph of Justice."
1904. No address.
1905. EMLIN McCLAIN—"Limitations on Federal Power in the Government of Territories."
1906. JOHN CAMPBELL—"Freedom of the Executive in Exercising Governmental Functions from Control by the Judiciary."
1907. HANNIS TAYLOR—"The Science of Jurisprudence."
1908. GEORGE R. PECK—"The March of the Constitution."
1909. JOHN H. WIGMORE—"The Science of Criminology—Rules of Evidence in Criminal Cases."
1910. C. S. THOMAS—"Justice Delayed is Justice Denied."
1911. JOHN BURKE—"Employers' Liability and Workingmen's Compensation Acts."
1912. WILLIAM RENWICK RIDDELL—"Comparison of the Constitution of the United States and Canada."
1913. EMORY SPEED—"Americanism and American Judges."

PAPERS READ

1896

- L. G. KINNE—"*Procedure and Methods of the Courts of Final Resort of the Republic of Mexico, the United States of America, and of the Several States and Territories of the Union.*"

1897

- J. H. HENDERSON—"*The Enactment of Law; its Observance and Enforcement.*"

1898

- M. J. WADE—"*The Association and its Objects.*"

1899

- JOHN M. READ—"*Trusts.*"

- D. D. MURPHY—"*Some Proposed Reforms in the Administration of the Criminal Law.*"

- JAS. O. CROSBY—*President's Address.*

- THOMAS A. OHESHIRE—"*Proposed Reforms Relating to the Bench.*"

- SCOTT M. LADD—"*Should Expert Witnesses be appointed by the Court, or should their Selection be left to Litigants?*"

1900

- S. F. PROUTY—"*Majority Verdicts in Civil Actions.*"

- MATTHEW MATTHEWS—"*The Ideal Trial Lawyer.*"

- L. C. BLANCHARD—"*The Practice in the Nisi Prius Courts.*"

- GEORGE H. CARR—"*Should we have an Additional Court of Appeals?*"

1901

- CHARLES A. CLARK—"*The Law Reformer.*"

- J. C. MARRY—"*What Salaries should our Supreme and District Judges Receive?*"

- J. J. MCCARTHY—"*Perjury in Judicial Proceedings.*"

- FRANKLIN C. PLATT—"*The Lawyer's Duty in Respect to Himself and his Client.*"

- GEORGE H. CARR—"*The Lawyer's Duty in Respect to Himself and the Court.*"

C. W. BINGHAM—"The Lawyer's Duty in Respect to Himself and the Client of His Adversary."

E. M. CARR—"Insanity as a Defense to Crime."

1902

M. J. WADE—"The Use and Abuse of Expert Evidence."

H. M. REMLEY—"Should the Marriage of Feeble Minded and Degenerates be Prohibited by Law?"

J. H. MCCONLOGUE—"Justice Samuel F. Miller."

H. S. RICHARDS—"Ought our Laws be so Amended as to Exempt from Taxation Moneys and Credits, and Other Forms of Property Easily Concealed?"

A. E. SWISHER—"Should the Law Providing for the Collection of Taxes be Changed so as to Enforce by Additional Penalty, or Partial Consecration, the Assessments of Moneys and Credits which now Escape Taxation?"

GEORGE W. WAKEFIELD—"The Need of Law to Govern the Trial of Equity Cases."

E. E. MCLEBOY—"Would the Adoption of a Law for the Taxation of Mortgages and Relieving the Real Estate Covered by Mortgages from so much of the Burden of Taxation be Desirable?"

1903

F. F. DAWLEY—"Submissions to the Supreme Court under the New Statute."

W. H. C. JACQUES—"What should be Deemed Indebtedness Within the Meaning of Constitutional and Statutory Provisions Limiting the Amount thereof which Municipalities may Incur?"

WM. MCNETT—"What should be Deemed Indebtedness Within the Meaning of Constitutional and Statutory Provisions Limiting the Amount thereof which Municipalities may Incur?"

1904

GEO. W. WAKEFIELD—President's Address.

M. L. TEMPLE—"How Far are Labor Unions Liable for the Acts of their Members?"

WM. H. BAILY—"The Control of Public Utilities."

CHAS. A. CLARK—"Municipal Government."

1905

A. E. SWISHER—"An International Court."

W. H. MOHENBY—"Reformation of Criminal Practices."

CHAS. NOBLE GREGORY—"The American Lawyers and their Training."

R. M. HAINES—"Statistical Data from Official Reports."

W. E. FULLER—"Ethical Reform."

E. E. McELROY—"Double Taxation: Some Remedies Attempted."

FRANK I. HERRIOTT—"Are Moneys and Credits Appropriate Objects of Taxation?"

1906

D. D. MURPHY—"The Divorce Problem and Recent Decisions of the United States Supreme Court."

W. H. BAILY—"A Problem in the Control of Business Corporations."

S. M. WEAVER—"Salus Populi Suprema Lex."

1907

H. M. TOWNER—"Reformatory and Remedial Legislation."

WALTER I. SMITH—"The Nation, and Local Self Government."

JAMES J. CROSSLEY—"The Legal Aspects of Primary Election Laws."

CHARLES G. SAUNDERS—"The Indeterminate Sentence Law and Parole System."

BYRON W. NEWBERRY—"Pure Food Laws."

C. C. COLE—"A Duty Owing by the Members of the Bar of Iowa to its Supreme Court."

1908

JAMES G. BERRYHILL—"The Des Moines Plan of Municipal Government."

D. D. MURPHY—"The Growth of the Democratic Principle; and the Initiative and Referendum—its Latest Institutional Form."

A. N. HOBSON—"The Case Lawyer."

H. M. TOWNER—"A Proposed Code of Professional Ethics."

HORACE E. DEEMER—"Proposed Reforms in Criminal Procedure."

CHARLES M. HARL—"Constitutional Limitations and their Observance."

1909

H. C. HORACK—"Tendencies in Legal Education."

JAMES W. BOLLINGER—"Upward Tendencies in our Proposed Reforms."

B. I. SALINGER—"Should the Method of Selecting our Judiciary be Changed?"

1910

S. M. WEAVER—"The Rules."

J. J. CLARK—"The Present Status and Outlook of the Legal Profession."

M. A. ROBERTS—"The Problem of Industrial Accidents."

J. L. CARNEY—"Ideals and Uses of the State Bar Association."

1911

JOHN C. SHERWIN—"The Lawyer as a Patriot."

F. F. DAWLEY—"Particularist Society."

J. L. CARNEY—"John Marshall."

W. R. LEWIS—"The Law."

RALPH OTTO—"A Practical Legal Education."

1912

A. J. SMALL—"The Iowa State Library—With Special Reference to the Law Department."

WILLIAM BERRY—"The Administration of the Parole Law: The Indeterminate Sentence."

C. G. SAUNDERS—"The Judicial Recall."

J. L. PARRISH—"Some Railroad Problems."

1913

WALTER I. SMITH—"The Life and Public Services of James Wilson."

D. D. MURPHY—"The Law School and its Duty to the State."

F. F. FAVILLE—"Criticising the Courts."

HORACE E. DEEMER—"Representative Government."

MEMORANDA OF SUBJECTS REFERRED TO COMMITTEES

Report of Grievance Committee with reference to disbarment proceedings.

Referred to Committee on Constitution and By-Laws, p. 53.

Committee on Taxation, requested to make formal report at the 1914 meeting, p. 57.

Committee on Constitution and By-Laws, to prepare report to be printed and distributed to members ten days before annual meeting, p. 64.

Collateral Inheritance Tax, to be taken up immediately following the President's Address, p. 218.

President-elect requested to confer with the Governor of the State with reference to representatives from Iowa at the "Conference of Commissioners on Uniform State Laws," p. 55.

Seventh recommendation of Committee on Law Reform, relating to House File No. 158.

Referred to Committee on Law Reform, p. 230.

Torrens or other system of land titles.

Referred to O. P. Meyers, E. G. Whitney, Chas. E. Scholz, C. H. Van Law, Jno. T. Clarkson, p. 223.

Dues and Delinquencies, with power to make settlement.

Referred to Chas. M. Dutcher, Frank T. Nash, and H. C. Horack, p. 234.

LIST OF MEMBERS
OF THE
IOWA STATE BAR ASSOCIATION
1913-14

Alberson, R. B.	Des Moines	Birdsall, W. N.	Waterloo
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Ambler, H. A.	Burlington	Boeye, A. N.	Webster City
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Anderson, F. L.	Marion	Boland, T. J.	Council Bluffs
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		Boyd, R. W.	Malcom
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Barker, A. P.	Clinton	Brennan, Hugh	Des Moines
Barker, W. L.	Cresco	Brockett, O. M.	Des Moines
Barner, Geo. S.	Webster City	Brockney, H. W.	Sioux City
Barnes, Don	Cedar Rapids	Brookhart, S. W.	Washington
Barnhart, W. E.	Spencer	Brown, Franklin	Des Moines
Baskerville, E. B.	Eldora	Brown, Glenn	Dubuque
Bedell, Edgar T.	LeMars	Brown, J. D.	Guthrie Center
Bell, Eardley, Jr.	Wellman	Brown, R. H.	Sioux City
Bennett, A. T.	Sioux City	Browning, Chas. C.	Coon Rapids
Berry, W. H.	Indianola	Browning, D. C.	Sioux City
Berryhill, James G.	Des Moines	Bruff, J. B.	Atlantic
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		Cook, Roy A.	Independence
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Calhoun, J. C.	Keosauqua	Cooper, Frank A.	Davenport
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Chamberlain, Wm.	Cedar Rapids	Crary, E. A.	Grundy Center
Chamberlin, W. M.	Davenport	Crockett, F. W.	Des Moines
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Chappell, H. C.	Independence	Crosby, J. H.	Cedar Rapids
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Clark, Charles A.	Cedar Rapids	Cubbage, Roy E.	Des Moines
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Clark, Charles B.	Montesuma	Cunningham, John	Humboldt
Clark, Chas. W.	Montesuma	Cutting, E. W.	Decorah
Clark, Geo. B.	Oakland		
Clark, Howard J.	Des Moines	Dahlberg, C. L.	Des Moines
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Clark, Wm. G.	Cedar Rapids	Davidson, F. C.	Emmettsburg
Clarkson, John T.	Albia	Davis, Aymer D.	Eldora
Cleary, Thos. P.	Sioux City	Davis, Frank M.	Corning
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Cliggitt, John	Mason City	Davis, James C.	Des Moines

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Deacon, C. J.	Cedar Rapids	Feely, Guy A.	Waterloo
Deemer, H. E.	Red Oak	Ferguson, Earl R.	Shenandoah
Deery, John	Dubuque	Ferris, F. L.	Sioux City
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DeMar, John C.	Des Moines	Field, A. G.	Des Moines
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Dennis, Wm.	Marion	Finch, Parley	Humboldt
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Devitt, James A.	Oskaloosa	Fitzpatrick, Dan'l H.	Mason City
Dewell, Jas. S.	Missouri Valley	Flickinger, A. T.	Council Bluffs
DeWolf, Sherman W.	Reinbeck	Flickinger, I. N.	Council Bluffs
Diamond, T. E.	Sheldon	Flynn, Sylvester	Eagle Grove
Ditsen, Henry E. C.	Davenport	Fordyce, E. A.	Cedar Rapids
Donnelly, M. J.	Cedar Rapids	France, J. C.	Tipton
Dorn, C. R.	Des Moines	Francis, L. E.	Spirit Lake
Douglas, Floyd	Fort Dodge	Frantzen, J. P.	Dubuque
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INDEX

[Titles of papers and addresses are printed in *italics*.]

- Adams, John, 107, 194
- Adams, Samuel, 194, 198
- Addresses, list of annual, 264
- Alabama, 81, 82
- Albany Plan, 193
- Ambler, Jaqueline, 106
- Amendments, methods of making, 202-204
- Amendments to Constitution of Bar Association, 57-64
- American Bar Association, report of delegates to, 43-46; representative of, 46; appointment of delegates to, 218
- Americanism and American Judges*, 97-114
- Amos, Charles Hestwood, biographical sketch of, 23, 24
- Annual addresses, 264
- Appeal, abolition of right of, 183
- Appeals, delay caused by, 181
- Appomattox, surrender of Lee at, 102
- Arguments, limitation on, 180
- Arp, Henry A., biographical sketch of, 24
- Articles of Confederation, plans for revision of, 69-71; reference to, 193
- Attorney General, part of, in disbarment proceedings, 49, 50, 52; investigation of judges by order of, 110-113
- Auditing Committee, report of, 18
- Baldwin, Charles, 38
- Bank of America, 68
- Banquet, proceedings of, 118-169
- Bar Association, Iowa State, next meeting of, 2, 218; organization of, 13; applications for membership in, 14-16; deceased members of, 21; report of committee relative to reprinting proceedings of early, 64, 65; election of officers of, 219, 220; list of members of, 269-278; officers of, 278; executive committee of, 278
- Belgium, 20
- Bell, Joseph, 168
- Bills of Lading Act, 54
- Bloody Assizes, 101
- Brearily, David, 196
- Brewer, David J., 45
- Brown, C. M., biographical sketch of, 24, 25
- Burk, William D., 26
- Burlington, 7, 47, 218
- Butler, James D., biographical sketch of, 24
- Butler, Pierce, 80
- By-Laws, proposed amendments to, 60, 61
- Call, Asa C., 26
- Call, Asa F., biographical sketch of, 26, 27
- Callender, Albert Woodworth, biographical sketch of, 25
- Carnegie, Andrew, 86
- Carr, E. M., report by, 43
- Carroll, Daniel, 196
- Carskaddan, Jerome, biographical sketch of, 26

- Carson, Hampton L., 86
 Casady, P. M., 167
 Casady, Samuel H., 167
 Cedar Rapids, 7, 9
 Challenges, 180, 181
 Chattanooga, battle of, 103
 Checks and balances, 193, 197, 198, 201, 207, 212
 Chickamauga, battle of, 103
 China, delegate from, 46
 Chisholm *vs.* Georgia, 77
 Choate, Rufus, 153
 Civil War, effects of, 104, 105
 Clair, William J., biographical sketch of, 25
 Clark, J. J., discussion by, 63, 225, 226
 Clark, T. Elwood, 168
 Clymer, George, 67
 College of Philadelphia, 78
 Colonies, power of Governors in, 192; absence of democracy in, 194
 Colt, Le Baron B., 45
 Committees, reports of, 14-16, 18, 21-23, 48-52, 53-55, 56, 57-64, 65, 218, 219, 220, 221, 232, 233; subjects referred to, 53, 65, 171, 230, 268; amendment relative to, 59; appointment of, 87; members of, 96, 97, 233; list of, since organization of Association, 248-263
 Confederation, failure of, 193
 Constitution and By-Laws of Bar Association, proposed amendments to, 57-64; text of, 239-247
 Constitution and By-Laws, Committee on, subject referred to, 53; report of, 57-64; question recommended to, 64; motion to print report of, 64; members of, 236
 Constitution of United States, services of Wilson in securing adoption of, 74-76; evolution of, 97, 98; amendments to, 156, 157; opposition to adoption of, 197; provisions of, for removal of judges, 200, 201
 Constitutional Convention of 1787, services of Wilson in, 68-74; character of delegates to, 194-196
 Constitutional government, character of, 189
 Constitutions, disrespect for, 153, 154; veneration for, 188; character of, in America, 188; methods of amending, 202-204; recall of judicial decisions by amendments to, 206, 207
 Continental Congress, powers of, 193
 Contingent fees, recommendation relative to contract for, 220, 227, 228
 Contracts, obligation of, 216
 Convention system, abolition of, 211
 Cooper, A. T., 53; report by, 57; discussion by, 63, 233, 234
 Cornish, J. N., 29
 Council Bluffs, 47
Courts, Criticising the, 171-187
 Courts, power of, to declare laws unconstitutional, 100, 184-187, 200, 201, 202, 212; constitutional justice taught by, 104; demand of, for support, 105, 106; legislative restrictions on, 109, 110; criticism of, 172-187; position of, in colonies, 192, 193; powers of, under Articles of Confederation, 193; principles which should be enforced by, 212, 213
 Criminal cases, abolition of right of appeal in, 183
 Cromwell, Oliver, 101
 Crosby, J. O., 218
 Cushing, Caleb, 108
 Dartmouth College case, 124
 Davenport, 7, 47, 50, 51
 Davis, Crawford F., biographical sketch of, 29, 30

- Dawson, A. E., 31
 Dawson, Thomas Cleland, biographical sketch of, 27-29
 Dayton, Jonathan, 195, 196
 Decisions, reversal of, 182-184; recommendation of law relative to, 220, 223
 Declaration of Independence, 190-192
 Deemer, Justice Horace E., remarks by, 118-120, 236, 237; address by, 187-218
 Delinquencies, question of, referred to committee, 233, 234
 Democracy, cure for ills of, 144, 145; absence of, in early English reforms, 189, 190; reference to, 190, 192; absence of, in colonies, 194; fear of, 197, 198, 201; impossibility of having, 204; absence of pure, 207; plans to produce greater, 209-212
 Demurrer, recommendation relative to, 221, 230, 231
 Des Moines, 9, 13, 14, 47, 151
 Dickinson, John, 66, 196
 Dickson, Samuel, 86
 Dillon, John F., 45
 Disbarment, discussion of subject of, 48-52; resolution relative to, 65
 Distributees in an estate, recommendation relative to, 221, 228, 229
 Divorce, recommendation relative to actions for, 221, 230
 Divorce Act, 54
 Draper, George E., biographical sketch of, 29
 Dred Scott decision, 124
 Dubuque, 7
 Due process of law, 214, 215, 216
 Dues, amendment relative to, 60, 61; question of, referred to committee, 233, 234
 Dunn, Henry W., 87
 Electoral College, 72, 73, 211
 Ellsworth, Oliver, 196
 Ely, N. D., discussion by, 50, 51; report by, 53; resolutions by, 65
 Employers' liability, 157
 England, lack of democracy in early reforms in, 189, 190; models for government adopted from, 198; changes in government of, 199, 200; removal of judges in, 201
 Evans, E. B., report by, 220, 221; discussion by, 226, 227
 Examiners of Department of Justice, 110-113
 Executive Committee, 58, 59; members of, 96, 97, 278; report of, 218
 Extradition, laws relative to, 55
 Family desertion, act relating to, 54
 Farnham, Charles W., remarks by, 46-48, 126
 Faville, F. F., paper by, 171-187
 Fees, amendment relative to, 60, 61
 Fellows, L. E., biographical sketch of, 30
 Fiske, John, 198
 Fleischmann, Simon, response to toast by, 150-158
 Foster, John W., 45
 Frame, W. H., 168
 France, Advocate-General of, 68; reign of terror in, 101
 Franklin, Benjamin, 68, 87, 98, 109, 194, 195, 196
 Franklin's Plan, 193
 Gallatin, Albert, 87, 107, 108
 Georgia, 81, 83
 Georgia and State Rights, 84
 Georgia Yazoo Company, 80
 Germany, 20
 Gerry, Elbridge, 196, 198, 200
 Gettysburg, battle of, 103
 Gibson, Dwight T., biographical sketch of, 30, 31

- Gladstone, William E., 97
 Government, testing of, 188
 Governor, power of, in colonies, 192
 Grandfather clauses, 73
 Granger cases, 124, 125
 Grant, Ulysses S., 102
 Great Council, 189
 Greene, Nathanael, 80, 195
 Gregory, President, 45
 Grievances, Committee on, report of, 48-52; resolutions referred to, 65; members of, 236
 Griffith, Judge, 90
 Guardians, recommendation relative to, 220, 226, 227
- Haines, R. M., 58, 61; discussion by, 62, 63; motion by, 219
 Hamilton, Alexander, 69, 195, 196, 197
 Harding, W. L., address of welcome by, 6-10
 Harding, P. W., 52
 Harvey, James F., 83
 Harvey, John W., biographical sketch of, 33
 Haas, Carl F., biographical sketch of, 31, 32
 Hays, L. N., 23
 Healy, Robert, motion by, 114, 115; discussion by, 227, 230
 Hedges, Christian C., biographical sketch of, 32, 33
 Helsell, W. A., discussion by, 231
 Henderson, G. F., 103
 Henley, Hadley M., biographical sketch of, 31
 Henry, Patrick, 82, 195, 198
 House of Commons, 189, 193, 198
 House of Lords, 189, 198, 199
 Hubbard, Elbert H., biographical sketch of, 34
 Hubbell, Frederick M., remarks by, 167-169
 Hudson, N. C., 168
- Hughes, J. N., discussion by, 49, 50, 51, 52
 Hull, George C., biographical sketch of, 32
 Hull, Henry W., biographical sketch of, 32
 Hunter, Rollin M., biographical sketch of, 33, 34
- Immigration, 73
 Impeachment of judges, 201
 Implied powers, 107, 108
 Income tax, 157
 Inheritance tax, collateral, 218
 Initiative, 210, 211
 Instructions, recommendation relative to, 221, 229, 230
 Iowa, members of American Bar Association in, 47; backwardness of, in taxation, 56
 Iowa City, 7, 9, 151, 152
 Iredell, James, 79, 86
 Ives Law, 157
- Jackson, Andrew, 208
 Jackson, James, 83, 84
 Jackson, Thomas J. (Stonewall), 103
 Jefferson, Thomas, feud between Marshall and, 106-109; reference to, 190, 194, 198
 Jeffreys, executions by, 101
 Jepsen, George, discussion by, 228, 229
 Johnson, Judge, charge against Wilson made by, 80
 Johnson, Reverend E. S., invocation by, 5, 6
 Johnson, William, 196
 Johnston, Samuel, 79
 Jones, M. H., 29
Judges, Americanism and American, 97-114
 Judges, recall of, 12, 178, 200, 204, 205; principles of government established by, 106; secret investi-

- gation of, 110-113; criticism of, 171-187; selection of, 177; term and salary of, 178, 179; laws made by, 181; position of, in colonies, 192; position of, in England, 199; method of removal of, 200, 201
- Judicial decisions, recall of, 12, 205-207
- Judiciary, independence of, 200
- Justice, Department of, Examiners of, 110-113
- Kellogg, Frank B., 45
- Kennedy, J. L., motion by, 223
- Kentucky Resolutions, 107
- Keokuk, 7, 47
- King, Rufus, 196
- King, powers of, 189, 190, 198, 199
- Klingelamith, M. C., 79, 80
- Knight, Judge, 90
- Knox, Philander C., 86
- Lacey, John F., report by, 18; remarks by, 115, 116, 235, 236; committees announced by, 236
- Lacy, Benjamin W., biographical sketch of, 36
- Land titles, resolution relative to, 171
- Langdon, John, 196
- Langdon, Stephen, 98
- Lansing, John, 195, 196
- Law, criticism of administration of, by courts, 171-187; delay in administration of, 179-181; making of, by judges, 181, 182
- Law in the Making*, 159-166
- Law Library, State, condition of, 20
- Law Reform, Committee on, report of, 220, 221; discussion of report of, 223-232; vote on recommendations of, 223, 226, 227, 228, 229, 230, 231; subject referred to, 230; members of, 236
- Law School and its Duty to the State, The*, 87-95
- Laws, influences effecting enactment of, 162; power of courts to declare unconstitutionality of, 184-187, 200, 201, 202
- Lawyer, Progress and the*, 127-141
- Lawyer, The Promise for the*, 141-149
- Lawyers, discussion of subject of disbarment of, 48-52; training of, 88, 89; important position held by, 88, 89
- Leach, Andrew, 167
- Leading Cases*, 120-126
- Lee, Richard Henry, 195
- Lee, Robert E., 99, 102, 106
- Legal Biography, Committee on, report of, 21-43; members of, 236
- Legal Education and Admission to the Bar, Committee on, members of, 236
- Legal Tender Cases, 72
- Legislation, checks upon power of, 190
- Legislature, position of, in colonies, 192
- Lenahan, D. J., 35
- Lewis, William Draper, 86
- Librarian, report of, 18-20
- Lincoln, Abraham, 102, 116; attitude of, toward southern States, 104, 105
- Lindt, John, biographical sketch of, 35, 36
- Livingston, Schuyler W., response to toast by, 141-149
- Livingston, William, 196
- Long, Edward A., biographical sketch of, 34, 35
- Louisiana Purchase, 107
- Lyon, D. E., biographical sketch of, 35
- Lyon, George T., 35

- McConlogue, J. H., report by, 56;
 reference to, 219
 McCullough *vs.* Maryland, 108
 McElroy, W. O., discussion by, 223,
 224
 Macomber, Charles S., discussion by,
 52, 228
 Madison, James, 195, 196, 200
 Magna Charta, 98, 189, 216
 Marbury *vs.* Madison, 186, 208
 Marshall, John, 12, 79, 113, 186, 200,
 208; feud between Jefferson and,
 106-109
 Martin, Luther, 69, 196, 200
 Martin, Wesley, discussion by, 233,
 234
 Mason, George, 196, 200
 Massachusetts, 192, 200
 Members, list of, 269-278
 Membership, amendments relative to,
 58, 59
 Membership, Committee on, report
 of, 14-16; amendment relative to,
 59
 Metcalf, C. R., discussion by, 233, 234
 Michigan, 211
 Milner, Thomas H., biographical
 sketch of, 37
 Milwaukee, meeting at, 53
 Mills, Edward, biographical sketch
 of, 36, 37
 Missionary Ridge, 103
 Mississippi, 81, 82
 Mitchell, S. Weir, 86
 Moody, William H., 86
 Morris, E. T., biographical sketch of,
 37
 Morris, Gouverneur, 68, 196, 200
 Morris, Robert, 68, 196
 Munn *vs.* Illinois, 124
 Murphy, D. D., discussion by, 63,
 228; paper by, 87-95; reference to,
 219
 Myers, O. P., resolution by, 170, 171;
 discussion by, 226
 Nash, Frank T., report by, 16-18
 National Bank, constitutionality of,
 108
 Negotiable Instrument Act, 54
 Negro question, discussion of, by
 American Bar Association, 43, 44
 Negro vote, suppression of, 73
 New England Confederation, 193
 New Jersey, 200
 New Jersey Plan, 69, 70, 71
 New York, employers' liability law
 in, 157
 Newman, Omar, 168
 Nickle, O. D., report by, 14-16
 Nominating Committee, members of,
 96; report of, 218, 219
 North Carolina, 200

 O'Connor, Maurice, 126
 O'Fallon, James, 83
 Officers, election of, 219, 220; list of,
 since organization of Association,
 248-263; list of present, 278
 Original package cases, 214

 Paine, Thomas, 198
 Papers read before Association, list
 of, 265-268
 Parker, Alton B., 86
 Parrish, R. L., 42
 Patterson, William, 69, 196
 Pennsylvania, Constitution of 1776
 of, 67; reference to, 68, 193; re-
 moval of remains of Wilson to,
 86, 87
 Pennsylvania Constitutional Conven-
 tion, 76
 Pennsylvania Ratifying Convention,
 services of Wilson in, 74-76
 Pennypacker, Governor, 85, 86
 Pepper, I. S., 26
 Pergler, Charles, discussion by, 52
 Peters, Richard, 66
 Phelps, Julian, biographical sketch
 of, 38

- Philadelphia, removal of remains of Wilson to, 86, 87
Pierce, William, 68
Pinckney, Charles, 69, 196
Poles, efforts of, to throw off Russian yoke, 100, 101, 102
Pollard, J. A. S., response to toast by, 126-141
Pollock, Sir Frederick, 46
Poor, Cornelius L., biographical sketch of, 38
President, term of, 73; direct election of, 73, 211
Primary elections, 211
Prime Minister, 198, 199
Probate of wills, recommendation of law relative to, 220, 223-226
Progress and the Lawyer, 127-141
Property qualifications, 194

Ralph, case of, 123
Randolph, Edmund, 69, 196, 198
Randolph, William, 106
Ratcliff, Robert F., biographical sketch of, 38, 39
Rate cases, 124
Read, Joseph R., 41
Recall, 209, 210
Recall of judges, 12, 178, 200, 204, 205
Recall of judicial decisions, 12, 205-207
Referendum, 210, 211
Registration fees, 61
Representative Government, 187-218
Representative government, evolution of, in America, 190; adoption of system of, 193; growing distrust of, 208, 209; plans to democratize, 209-212; true type of, 211
Representatives, position and duties of, 204, 210
Resolutions, Committee on, members of, 87; report of, 232, 233
Returning to First Principles, 150-158

Revenue, struggles over subject of, 190
Reversal of decisions, 182-184; recommendation of law relative to, 220, 223
Revolutionary War, services of Wilson during, 66-68; reference to, 190
Rhode Island, 200
Richman, DeWitt C., 26
Roach, E. C., report by, 48; discussion by, 52
Roosevelt, Theodore, 108, 156
Root, Elihu, 187
Rumple, J. N. W., 32
Russia, efforts of Poles to throw off yoke of, 100, 101, 102
Rutledge, John, 196

Sales Act, 54
Salinger, B. L., discussion by, 225, 230, 231
Sammis, J. U., response to toast by, 159-166
Sanford vs. Scott, 124
Saunders, C. G., motion by, 16, 55, 56, 64; discussion by, 63, 229, 235; remarks by, 115; report by, 218
Sawyer, P. A., biographical sketch of, 39
Senate, United States, composition of, 72
Separation of powers, 197
Sharpsburg, battle of, 103
Sherman, Roger, 196
Shiras, Oliver P., 90
Sioux City, meeting of Association at, 5; address of welcome to, 6-10; reference to, 47; early days in, 167, 168
Sioux County, reminiscences of early days in, 168, 169
Slaughter house cases, 215
Slavery, attitude of Wilson toward, 72

- Small, A. J., report by, 18-20
 Smith, H. Y., 37
 Smith, S. F., 51
 Smith, Walter L., paper by, 65-87
 Somers, John, 98
 South, suppression of negro vote in, 72, 73
 South Carolina Yazoo Company, 82, 83
 Speer, Emory, 95; annual address by, 97-114; vote of thanks to, 114, 115, 232; remarks by, 117, 166, 167
 Standing committees, amendment relative to, 59
 State University, progress of law school of, 90, 91
 Stock Transfer Act, 54
 Stockman, D. T., motion by, 218; discussion by, 224, 225
 Stone, Emerson L., 168, 169
 Stone, W. A., 23
 Story, Joseph, 109
 Strong, Caleb, 196
 Struble, Isaac S., biographical sketch of, 40, 41
 Suffrage, limitations on, 194
 Sullivan, Edward F., biographical sketch of, 39, 40
 Sullivan, Jerry B., 40
 Supreme Court of United States, services of Wilson on, 76-79; early judges of, 201; statutes declared unconstitutional by, 201, 202
 Sutherland, George, 45

 Taft, Fred, 39
 Taft, William H., 172
 Taxation, checks on power of, 190
 Taxation, Committee on, report of, 56, 57
 Taylor, Henry J., 34
 Technical grounds, reversal of decisions on, 182-184
 Tennessee Yazoo Company, 82
 Terry, Charles Thaddeus, 55
 Texas vs. White, 105
 Thayer, E. H., 26
 Thornell, A. B., 29
 Tolerton, John J., biographical sketch of, 41
 Torrens Land System, 171; members of committee to examine, 233
 Treasurer, report of, 16-18; duties of, 60, 61

 Uniform Laws, Committee on, report of, 53-55
 Uniform State Laws, Conference of Commissioners on, meeting and work of, 53-55; appropriation for, 170
 United States Senators, popular election of, 156, 211

 Van Law, C. H., report by, 218, 219; discussion by, 224, 229, 230
 Van Wagenen, Judge, 39
 Varga, Stephen, 42
 Verdicts, majority, 234, 235
 Vermont, 211
 Veto power, 73, 192, 197, 198, 200, 212
 Virginia, 200
 Virginia Plan, 69, 70, 71
 Virginia Yazoo Company, 82, 83

 Wade, Martin J., response to address of welcome by, 10-14
 Walne, Robert, Jr., 84
 Wallingford, William H., biographical sketch of, 41
 Warehouse Receipts Act, 54
 Washington, Bushrod, 68, 80
 Washington, George, 68, 76, 77, 82, 83, 99, 194, 195, 196
 Washington, John A., 68
 Waterloo, battle of, 103
 Weaver, S. M., motion by, 57; discussion by, 224, 228

- Webster, Daniel, 99, 100, 110, 124
White, Edward D., 86
Wills, act relative to, 54; recommendation of law relative to, 220, 223-226
Wilson, Bird, 80, 84
Wilson, James, The Life and Public Services of, 65-87
Wilson, James, birth of, 65; education of, 65; coming of, to America, 66; services of, during Revolution, 66-68; services of, in constitutional convention, 68-74; services of, in ratifying convention, 74-76; services of, in Pennsylvania constitutional convention, 76; services of, on Supreme Court, 76-79; death of, 79; assaults upon, 79-84; writings of, 84; articles dealing with life of, 84, 85; removal of remains of, 86, 87; reference to, 196, 200
Wilson, Woodrow, 108
Withrow, W. S., response to toast by, 120-126
Witnesses, laws relative to obtaining of, 55
Woodin, D. W., biographical sketch of, 41
Wythe, George, 196
Yates, Robert, 195, 196
Yazoo frauds, 79; charges against Wilson in connection with, 80-84
Yazoo Land Companies, 84
Young, John Lewis, 33; biographical sketch of, 42

